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EXPOSITION

OF

ENGLISH LAW BY ENGLISH JUDGES,

COMPILED

FOR THE USE OF LAYMAN AND LAWYER

FROM THE MOST RECENT DECISIONS

(1886—1891)

BY

JOHN ALEXANDER NEALE, D.C.L.

[LONDON:
WILLIAM CLOWES AND SONS, LIMITED,
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1892.

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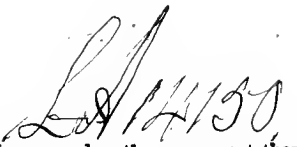

Law has been studied, in general, rather as an art than a science, with more solicitude to know its rules and distinctions than to perceive their application to that for which all rules of law ought to have been established, the maintenance of public and private rights. Nor is there any reading more jejune and unprofitable to a philosophical mind than that of our ancient law books. Later times have introduced other inconveniences, till the vast extent and multiplicity of our laws have become a practical evil of serious importance, and an evil which, between the timidity of the legislature on the one hand, and the selfish views of practitioners on the other, is likely to reach, in no long period, an intolerable excess. Deterred by an interested clamour against innovation from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patchwork scheme of modifications and suspensions than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulate statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect digest, the mass of learning that grows upon the panting student; and our jurisprudence seems not unlikely to be simplified in the worst and least honourable manner, a tacit agreement of ignorance among its professors. Much indeed has already gone into desuetude within the last century, and is known only as an occult science by a small number of adepts. We are thus gradually approaching the crisis of a necessary reformation, when our laws, like those of Rome, must be cast into the crucible. —HALLAM'S *Middle Ages*, Vol. II., Chap. viii.

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PREFACE.

It were perhaps unnecessary to say of this work that it is not of one's own making, that it is but a garnering of the fruit of other men's labours; still it is but just to acknowledge at the outset one's manifest obligation and indebtedness to others.

The science of law is in mundane matters the chief and supreme science, affording to the intellect the highest form of exercise in that sphere. Law regulates men's relations with their fellow-men to such a degree that ignorance of it were a folly, if such ignorance can be avoided.

Every man is presumed to know the law, a necessary though often a very inconvenient presumption. No man however knows the law, a fact equally inconvenient, though not equally necessary. This work has been undertaken in the belief that it is a comparatively easy thing for a man either to know the law or to have ready to his hand the means by which he may at once get to know it.

English law is the creature, the offspring, the child of the English people themselves; and this is the reason why in their heart, and in spite of all its imperfections, they love, honour and obey it.

All law is divisible into either common—that is, customary law—equity, or statute law; which three divisions are ultimately resolvable into common law alone. For equity is but a refining of common law, by which, so to speak, the ore is extracted from the dross and the dead letter is made to yield to the true and perfect spirit of it: and statute law

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also is, in truth, only a formal declaration of parts of the customary law, whose existence has either been well known in the long past or has come to be recognised in the nearer present.

It is true that, besides what has been mentioned, there has been incorporated into and made a part of the customary law some small portions of the laws of other places; but this is of limited extent and is perhaps the least satisfactory portion of the whole body of English law.

The method pursued in this work has been to take the most modern reported decisions and to extract from them the authoritative statements of our judges on various points of law as they arise, so that the reader may have before him, not an imperfect commentary upon the law, but the law itself: and so by degrees to place in the English reader's hands a complete, concise and intelligible digest of the law of his own country, saving him from recourse to musty storehouses and enabling him to draw for himself as out of a well pure and undefiled.

In each case the name of the judge or judges has been appended, so that it may be seen whether the statements are those of a judge of first instance, or of a Court of ultimate appeal and therefore of binding force until Parliament may otherwise decree. This has been done also on the principle of "honour to him to whom honour is due" and "*ferat qui meruit palmam.*" For as the responsibility of expounding law in all its clearness and fulness is a heavy one, so is the honour and credit of it very great also.

This collection of wise saws and modern instances is but an instalment of what, if it meets with a favourable reception and the reader be not too much cloyed with fat meat, will, it is hoped, in due course follow. It covers a period of five years only; but every year will tend towards the completion of a work, so far as a work of the kind can ever be completed, until the volume contains well-nigh all that can be said upon

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any matter of law whatsoever, turning the accomplishment of many ages into an hour-glass.

It is believed that this work will be a means of clearly setting forth, not only the perfections, but also the defects and imperfections of our law; and that it will aid in the remedying of such defects and imperfections.

The contents have been arranged alphabetically with a view to easy reference: and it has been thought desirable to mention in their place those Acts of Parliament which have been passed during the period the work covers and which are of public interest, importance and utility. Indeed no such Digest would be complete which omitted to mention Statutes and left the reader without information as to the sources from which to obtain the most authoritative statements of law on a great variety of subjects.

To conclude with a word to the wise. It is a great and good thing to have knowledge of the laws of one's country: but to have such knowledge is not necessarily to be a lawyer: and the man who thinks otherwise has been known to repent of this particular error.

Thus far, with rough and all unsteady pen,
Our bending author hath pursued the story,
In little room confining mighty men,
Mangling by starts the full course of their glory.

J. A. N.

LONDON,
January, 1892.

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NAMES OF JUDGES,

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The Right Hon. Lord Herschell, The Right Hon. Lord Halsbury,	*Lord Chancellors.*
The Right Hon. The Earl of Selborne.	
The Righ Hon. Lord Coleridge,	*Lord Chief Justice of England.*
The Right Hon. Lord Esher,	*Master of the Rolls.*
The Right Hon. Lord Blackburn, The Right Hon. Lord Watson, The Right Hon. Lord Fitzgerald, The Right Hon. Lord Macnaghten, The Right Hon. Lord Morris, The Right Hon. Lord Hannen,	*Lords of Appeal in Ordinary.*
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The Right Hon. Sir Barnes Peacock, The Right Hon. Sir Montague Edward Smith, The Right Hon. Lord Hobhouse, The Right Hon. Sir Richard Couch,	*Judicial Committee of the Privy Council.*
The Right Hon. Sir Henry Cotton, The Right Hon. Sir Nathaniel Lindley, The Right Hon. Sir Charles Synge Christopher Bowen, The Right Hon. Sir Edward Fry, The Right Hon. Sir Henry Charles Lopes, The Right Hon. Sir Edward Ebenezer Kay,	*Lords Justices.*
The Lord High Chancellor (President), The Master of the Rolls, The Right Hon. Sir James Bacon (Vice-Chancellor), The Hon. Sir Edward Ebenezer Kay, The Hon. Sir Joseph William Chitty, The Hon. Sir John Pearson, The Hon. Sir Ford North, The Hon. Sir James Stirling, The Hon. Sir Arthur Kekewich, The Hon. Sir Robert Romer,	*Judges of the Chancery Division of the High Court of Justice.*

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The Lord Chief Justice of England (President), The Hon. Sir William Robert Grove, The Hon. George Denman, The Hon. Sir Charles Edward Pollock, The Hon. Sir William Ventris Field, The Hon. Sir John Walter Huddleston, The Hon. Sir Henry Manisty, The Hon. Sir Henry Hawkins, The Hon. Sir James Fitzjames Stephen, The Hon. Sir James Charles Mathew, The Hon. Sir Lewis William Cave, The Hon. Sir John Charles Day, The Hon. Sir Archibald Levin Smith, The Hon. Sir Alfred Wills, The Hon. Sir William Grantham, The Hon. Sir Arthur Charles, The Hon. Sir Roland Lomax Vaughan Williams, The Hon. Sir John Compton Lawrance, The Hon. Sir Robert Samuel Wright, The Hon. Sir Richard Henn Collins,	*Judges of the Queen's Bench Division of the High Court of Justice.*
The Right Hon. Sir James Hannen (President), The Right Hon. Sir Charles Parker Butt (President), The Hon. Sir Francis Henry Jeune,	*Judges of the P. D. and A. Division.*
The Right Hon. Lord Penzance,	*Dean of Arches.*
The Hon. Sir Lewis William Cave,	*Chief Judge in Bankruptcy.*
Sir Charles Russell, Sir Richard Everard Webster,	*Attorneys-General.*
Sir Horace Davey, Sir Edward Clarke,	*Solicitors-General.*
The Right Hon. Sir Frederick Peel, William Philip Price,	*Railway and Canal Commissioners.*

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In this WORK the following abbreviations are used:—

App. Cas. **[1891] A. C.**	*indicates*	HOUSE OF LORDS (ENGLISH, IRISH, SCOTCH AND DIVORCE APPEALS), AND PRIVY COUNCIL.
Ch. D. **[1891] Ch.**	„	CHANCERY DIVISION.
Q. B. D. **[1891] Q. B.**	„	QUEEN'S BENCH DIVISION.
P. D. **[1891] P.**	„	PROBATE, DIVORCE AND ADMIRALTY DIVISION

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TABLE SHEWING THE VOLUMES OF THE LAW REPORTS BELONGING TO EACH COURT IN EACH YEAR, FROM 1886 TO 1891.

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AN EXPOSITION

OF

ENGLISH LAW BY ENGLISH JUDGES.

ABORTIVE NEGOTIATIONS.

See Costs. 15.

ABSOLUTE GIFT—Forfeiture Clause—Repugnant Condition—Bankruptcy—Annulment.

METCALFE *v.* METCALFE, **43 Ch. D. 639.** There are unquestionably gifts to the plaintiff of an absolute character; gifts, that is, which, if concerned with land, would create an estate in fee, and the plaintiff says that to put the forfeiture clause in operation as regards these would be to defeat the original gift by a condition repugnant to it, and therefore void. You cannot limit an estate to a man and his heirs until he shall convey the land to a stranger, because it is of the essence of an estate in fee that it confers free power of alienation, and it has long been settled that the same principle is applicable to gifts of personalty. . . . You can allow such a proviso to defeat any particular estate, not as operating to take away that which has already been given, but as restricting the quantity of the original gift; but an estate in fee, or its equivalent, an absolute gift of personalty, does not admit of such treatment. . . . In considering the point last treated I have grouped together, as governed by the same rule, estates in possession and in remainder; but when one comes to consider a property given otherwise than absolutely, as for life, a distinction must be taken between these two classes. The distinction is justified by the principle of construction above-mentioned, and is the logical outcome of it. The intention of the testator that the legatee shall partake of his bounty provided only that personal enjoyment be secured, would be defeated if, when an alienation, whether by act of the party or operation of law, is cancelled before enjoyment becomes possible, enjoyment were held to be prohibited by the forfeiture clause. It has been held in many cases, to some of

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ABSOLUTE GIFT—*continued.*

which I shall presently refer, that if a bankruptcy, which, if continuing, would have brought a forfeiture clause into operation, has been annulled before any money becomes payable to the legatee, the clause does not come into operation, because the personal enjoyment does not, in the events which have happened, require to be secured, and this rule is directly applicable to reversionary interests, whether taking effect as remainders or as executory gifts.—KEKEWICH, J.

640. The moment for determining whether the forfeiture clause is applicable to it or not is the moment when receipt or payment becomes possible in fact.—KEKEWICH, J.

641. The postponement of payment by some accident . . . ought not, I think, to affect the result . . . It is said . . . that . . . the proceedings in bankruptcy were unduly prolonged, yet the estate was solvent, and there was enough to pay the creditors in full, so that whatever was coming to the legatee under the will was really her own, notwithstanding that it could not have been paid without the concurrence of the trustee in bankruptcy. If that had been substantially true, I should certainly have been disposed to hold that the forfeiture clause did not come into operation.

642. If money were payable to a trustee in bankruptcy under such circumstances that he thereupon, without the happening of any event other than some declaratory or other order claimable by the legatee, became a trustee of that money for the legatee, I should certainly, as at present advised, hold that the money would be personally enjoyed by the legatee just as much as if he had authorized an attorney to receive it on his behalf. In other words, annulment of bankruptcy need not have been formally made so as to prevent the operation of the forfeiture clause, provided there exists the circumstances which entitle the legatee to claim annulment as a matter of right; and that, although some account may have to be taken, or some payments to creditors or others have to be made, before annulment can be perfected.—KEKEWICH, J. [Affirmed [1891] 3 Ch. 1.]

ABUSE OF PROCESS OF COURT.

CONCHA *v.* CONCHA, **11 App. Cas. 570.** We are bound to see that the powers of the Court are only used to advance justice.—LORD FITZGERALD.

See Cross-examination. 1.
Res judicata.
Staying Proceedings. 2.

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ACCEPTANCE.

See Bill of Exchange. 4.

ACCORD AND SATISFACTION.

DAY *v.* MCLEA, **22 Q. B. D. 610.** In the case of a retention on account of a cheque sent in satisfaction, it is a question of fact on what terms the cheque was kept.—LORD ESHER, M.R.

ACCOUNT.

See Mortgagee in Possession. 1.

ACCUMULATION—Maintenance.

In re COLLINS. COLLINS *v.* COLLINS, **32 Ch. D. 232.** Where a testator has made a provision for a family, using that word in the ordinary sense in which we take the word, that is the children of a particular *stirps* in succession or otherwise, but has postponed the enjoyment, either for a particular purpose or generally for the increase of the estate, it is assumed that he did not intend that these children should be left unprovided for or in a state of such moderate means that they should not be educated properly for the position and fortune which he designs them to have, and the Court has accordingly found from the earliest time that where an heir-at-law is unprovided for, maintenance ought to be provided for him. Lord Hardwicke has extended that to the case of a tenant for life, and the decision of Lord Hardwicke has been accepted and followed by the most distinguished judges.—PEARSON, J.

ACQUIESCENCE.

In re RAILWAY TIME-TABLES PUBLISHING COMPANY. *Ex parte* SANDYS, **42 Ch. D. 115.** If I ask for one thing and have another thing sent me, and I keep it, I must pay for it, not because I make another bargain to pay for it when I say I will not, but because the law imposes on me an obligation to pay for it if I keep it.—LINDLEY, L.J.

117. I order goods of one description from a merchant; he cannot compel me to take goods of a different description, and he does not complete his contract by giving me goods of a different description; but if he sends me goods which are not according to the contract and which are not within the description of the contract, and I nevertheless elect to take them, my act with regard to them is evidence of a new contract, which the law will imply, to pay for that which I have kept.—BOWEN, L.J.

See Administration. 3.

Ratification.

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ACTIO PERSONALIS—Tort.

CONCHA *v.* MURRIETA. DE MORA *v.* CONCHA, **40 Ch. D. 553.** '*Actio personalis moritur cum personâ.*' It is true that no action for a tort can be revived or commenced against the representatives of the person who committed it; but the case is quite different where the act is not a mere tort, but is a breach of a quasi contract, where the claim is founded on breach of a fiduciary relation, or on failure to perform a duty.—COTTON, L.J.

ACTION IN REM.

See Ship. 3.

ADEMPTION.

See Double Portion.

ADMINISTRATION.

1. —— **Account—Executor—Retainer.**

In re BARRETT. WHITAKER *v.* BARRETT, **43 Ch. D. 73.** Before that order was made she clearly could have paid the trustee the whole of the assets, for she would have had a right to prefer one creditor to another. Did the making of that order make any difference? I do not think it did, for I find no decree for administration. If there had been such a decree, it would have put an end to her power of preference.—NORTH, J.

2. —— **Executors—Right to Prefer.**

In re HARGREAVES. DICKS *v.* HARE, **44 Ch. D. 243.** We all know that, until an order is made for administration, executors can prefer one creditor to another to an extent to which they cannot after proceedings have been commenced. That seems to be the case still; the Act of Parliament has not said that executors shall out of Court observe the same rules as they are to observe in Court.—LINDLEY, L.J.

3. —— **Delay—Lapse of Time—Acquiescence.**

BLAKE *v.* GALE, **31 Ch. D. 208.** The demand here is this: "You, the legatees, received in 1861 money which I might then have insisted on being applied in discharge of my debt; it was my money that you received; give it me back." That is purely an equitable demand; and being a plain equitable demand, and nothing else, it is open to that well-known principle as strong as any Statute of Limitations—stronger, perhaps—on which this Court declines to entertain stale demands.—BACON, V.-C.

4. —— **Administration of Estates—Executor—Right of Retainer.**

In re JONES. CALVER *v.* LAXTON, **31 Ch. D. 444.** Without possession there can be no retainer.—KAY, J.

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ADMINISTRATION—*continued.*

447. The right of retainer, as it produces inequality, is never assisted.—KAY, J.

5. —— **Power to Executors to carry on Business—Right of Creditors of Testator and of subsequent Creditors of Executors—Funeral Expenses.**

In re GORTON. DOWSE *v.* GORTON, **40 Ch. D. 541.** What is the right of the creditor of the deceased? He is a creditor; he has no equitable rights as distinguished from legal rights against the assets of the deceased. His right is to sue the executor at law and get a judgment at law *de bonis testatoris*, and under that to seize under a *fi. fa.* the assets of the deceased in the hands of the executors at the time of his death. But he has nothing to do with future-acquired property. That is his right at law. But then, if the executor has so dealt with the assets as to have increased them, the executor cannot put the accretion into his own pocket, neither can he hand it over to the legatees or next-of-kin so long as the debts of the testator are unpaid. Therefore, I think it is plain that the creditors of the testator can get the subsequently-acquired property, but not on the same footing that they could get the property of the testator which were assets of the testator at the time of his death. The creditor of the testator can only get the after-acquired property on terms which are just. He cannot take the property from the executors and make the executors pay for it out of their own pockets. He can only have the property subject to the right of the executors to indemnity; that is to say, he cannot throw the cost of getting the assets on the executors, and take the assets regardless of that cost. The right of the executors to be indemnified out of the subsequently-acquired property lets in the rights of those to whom they are liable—that is to say, the creditors who have become such in the course of the executors' trading or carrying on the business. Such are the rights of the creditors of the deceased.

Now, let us look at the rights of those who have dealt with the executors after his death. The right of those is to sue the executors. I believe there are some very exceptional cases in which subsequent creditors can get the assets, and I think there is authority for saying that funeral expenses can be got out of the assets; but with those exceptions the right of subsequent creditors is to sue the executors. They have nothing to do with the assets of the testator at all, and they can only get at them by the circuitous process of the executors being indemnified. Now, adjust those rights, and the thing is perfectly plain. Out of the

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ADMINISTRATION—*continued.*

assets of that part of the estate which existed at the death of the testator his creditors come first; the executor has no right of indemnity except as regards debts incurred by himself as executor. —LINDLEY, L.J. [See 1891, A. C., p. 190.]

ADMINISTRATORS.

See Executors. 2.

ADMIRALTY—Ship—Wages—Lien.

THE QUEEN *v.* JUDGE OF CITY OF LONDON COURT AND OWNERS OF S.S. MICHIGAN, **25 Q. B. D. 342.** Lord Stowell *held* that the woman who had acted as caretaker was entitled to claim against the ship. The right to proceed *in rem* for services rendered on board a ship apparently extends to every class of person who is connected with the ship as a ship, as a sea-going instrument of navigation, or of transport of cargo from one place to another, and to services rendered by such persons in harbour just as much as to services rendered by them at sea.—WILLS, J.

ADMIRALTY COURT.

See Ship. 3.

ADMISSION—Order XXXII., r. 6.

PORRETT *v.* WHITE, **31 Ch. D. 52.** The defendant, one of the trustees of a settlement, in letters written to the plaintiff, his co-trustee, before the commencement of the action for the administration of the trusts, admitted having received £300, part of the trust funds, and invested it in an unauthorized way. The plaintiff, after the defendant had appeared in the action, took out a summons to have the £300 brought into Court, and made an affidavit deposing that he had paid the money to the defendant, and stating the admissions contained in the defendant's letters as to its application. The defendant did not answer this affidavit or adduce any evidence. Chitty, J., ordered the money into Court on the ground that the letters were a sufficient admission within Order XXXII., r. 6. The defendant appealed:—

Held, that as the defendant had not met the affidavit, there was a sufficient admission that the money was in his hands, and that the appeal must be dismissed.—SIR J. HANNEN, BOWEN and FRY, L.JJ.

ADULTERATION.

PAIN *v.* BOUGHTWOOD, **24 Q. B. D. 353.** Under the Food and Drugs Act, 1875, a person can be convicted even in the absence of evidence of guilty knowledge.—GRANTHAM and CHARLES, JJ.

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ADVERTISEMENT.

See Executors. 2.

AFTER-ACQUIRED PROPERTY.

See Bankruptcy. 1.
Bill of Sale. 2.
Bill of Sale. 3.

AGENCY.

See Solicitor. 1.

AGENT.

See Limitations, Statute of. 1.
Principal and Agent. 1.

AGRICULTURE.

See Board of Agriculture Act, 1889.

AIR.

See Injunction. 3.

AIR—Prescription.

BASS *v.* GREGORY, **25 Q. B. D. 483.** No man could dictate to his neighbour how he should build his house with respect to the general current of air common to all mankind, a sound principle of law; but it does not apply to the present case, because if ever there was a case of the access of air to premises through a strictly defined channel this is that case.

484. Although a good deal has been said from time to time against the doctrine of lost grant, yet almost all civilized countries have adopted it. That doctrine amounts in substance to this: that if a legal right is proved to have existed and been exercised for a number of years the law ought to presume that it had a legal origin. Perhaps the doctrine has best been stated by Parke, B., in *Bright* v. *Walker*, who says, "For a series of years prior to the passing of this Act (the Prescription Act), judges had been in the habit, for the furtherance of justice and the sake of peace, to leave it to juries to presume a grant for a long exercise of an incorporeal right, adopting the period of twenty years by analogy to the Statute of Limitations. Such presumption did not always proceed on a belief that the thing presumed had actually taken place; but, as is properly said by Mr. Starkie in his treatise on evidence, a technical efficacy was given to the evidence of possession beyond its simple and natural force of operation."—POLLOCK, B.

ALLOTMENTS ACT, 1887.

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ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

AMENDMENT.

1. —

BEDDINGTON *v.* ATLEE, **35 Ch. D. 329.** I should make all proper amendments which would enable me to do justice, and I should not dispose of the case as against the plaintiff on the ground that he has not pleaded this point if I thought it could be maintained on the facts proved.—CHITTY, J.

2. —

STEWARD *v.* NORTH METROPOLITAN TRAMWAYS COMPANY, **16 Q. B. D. 182.** An amendment of a pleading should in every case be allowed if it can be made without injustice to the other party.—LORD ESHER, M.R.

3. —

RIDING *v.* HAWKINS, **14 App. Cas. 56.** *Held*, that amendment was properly allowed after defendant had been cross-examined and his case closed, a case of fraudulent misrepresentation being disclosed by the cross-examination.—BUTT, J.

ANCIENT LIGHTS.

See Land Clauses Consolidation Act, 1845. 1.
Light. 2.

ANNOYANCE.

See Restrictive Covenant. 2.

ANNUITANTS—Legatees—Equitable Mortgagees.

GARFITT *v.* ALLEN. ALLEN *v.* LONGSTAFFE, **37 Ch. D. 50.** Persons entitled to the annuity or legacies are in the position simply of persons having a charge on real estate: they have no legal estate. They are in the position of equitable mortgagees; they could not have taken possession of the land; they could have enforced their charge by (amongst other things) getting the appointment of a receiver if they had thought fit to do so. They did not take steps to enforce their charge, and they are, in my opinion, in exactly the same position as a mortgagee who has not entered into possession. A mortgagee who has not entered into possession is not entitled to an account from a second mortgagee who has been in possession.—NORTH, J.

APPEAL.

1. —

ASSESSMENT COMMITTEE OF FULHAM UNION *v.* WELLS, **20 Q. B. D. 751.** It is undoubted law than an appeal is the creature of

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APPEAL—*continued.*

statute, and must be expressly given, and cannot be given by inference.—CAVE, J.

2. ——

CHRISTOPHER *v.* CROLL, **16 Q. B. D. 67.** The appeal is "brought" when the notice of appeal is served.—LORD ESHER, M.R.

3. ——

FLEMING *v.* HISLOP, **11 App. Cas. 694.** It is no use for the appellants to make out that this is something which is neither fact nor law, because unless they can make out that it is law, there is no appeal.—LORD BRAMWELL.

4. —— **Criminal Matter—Contempt of Court—Jury, Attempt to prejudice.**

O'SHEA *v.* O'SHEA AND PARNELL, **15 P. D. 63.** It is convenient that the notice should be entituled in the cause to shew to what matter the motion to commit refers; but what gives the Court the power to act is the fact that the appellant has done something to prevent the course of justice by preventing the divorce suit from being properly tried. That is clearly a contempt of Court of a criminal nature. Authorities have been cited which shew that everything done to prejudice the judge or jury in the trial of an action is a criminal act, because it is an attempt to prevent the course of justice. It is argued by the appellant that the act is complained of, not by the Attorney-General as a public wrong, but by the petitioner, who complains of it as a personal injury; but that makes no difference. It is conceded that it was a wrongful act, otherwise there could be no fine or imprisonment. And when you concede that it is a wrongful act, you find that, although it is headed in the divorce action, it is not a proceeding in the action—not a proceeding for the purpose of obtaining anything in the action, but an application to punish an attempt to induce the jury not to try the case properly, which is as much a criminal act as an attack upon the judge himself.—COTTON, L.J.

5. —— **Extension of Time.**

BRADSHAW *v.* WARLOW, **32 Ch. D. 406.** Where a motion or an appeal can be brought on, and it is objected that it is out of time, the appellant can always apply at the same time for an extension of time.—COTTON, L.J.

6. —— **Judge's Notes of Evidence.**

ELLINGTON *v.* CLARK, BUNNETT & Co., **38 Ch. D. 332.** It is the duty of the appellant to apply to one of the judges of the Court of

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APPEAL—*continued.*

Appeal through his clerk to ask the judge from whom the appeal is to send a copy of his notes to the Court of Appeal. It is to be understood that in future, when the appellant has not so applied for a copy of the judge's notes, we shall order the appeal to stand over to allow of the application being made. The Lord Justice Fry suggests, and I agree, that this standing over should be at the expense of the appellant if he has not previously made the application.—COTTON, L.J.

7. —— Appeal to House of Lords—Stay of Execution.

THE ANNOT LYLE, **11 P. D. 116.** An appeal shall be no stay of proceedings except the Court may so order. If in any particular case there is a danger of the appellants not being repaid if their appeal is successful, this must be shewn by affidavit.—LORD ESHER, M.R.

8. —— Time for—Judgment—Order.

ONSLOW *v.* COMMISSIONERS OF INLAND REVENUE, **25 Q. B. D. 466.** A "judgment" is a decision obtained in an action, and every other decision is an order.—LORD ESHER, M.R.

See Costs. 5.
Habeas Corpus. 2.
Judicature Act, 1873.
Security for Costs of.
Stay of Execution.

APPOINTMENT.

See Will. 11.

APPRENTICESHIP DEED.

See Infant. 1.

ARBITRATION.

1. ——

In re ARBITRATION BETWEEN SECRETARY OF STATE FOR HOME DEPARTMENT AND FLETCHER, **18 Q. B. D. 344.** An arbitrator ought, in his award, to follow the submission; and only determine what is submitted to him.

345. His award is, in my opinion, wrong in form; but as the arbitrator has, in fact, determined the matter submitted to him, I do not think we ought to set aside the award, but it ought to be remitted.—BOWEN, L.J.

2. —— Common Law Procedure Act, 1854.

DAVIS *v.* STARR, **41 Ch. D. 246.** Before that Act was passed it was held that the Court had no power to stay an action brought

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ARBITRATION—*continued.*

by either of the parties. It was thought that the Court ought not to enforce an agreement which prevented the parties from having recourse to the ordinary tribunals. The Act was, therefore, passed to enable the Court to enforce such agreements. But the question here is: Ought the Court to interfere in this case? —COTTON, L.J.

3. —— Refusal of Party to appoint Arbitrator—Arbitration Act, 1889.

In re SMITH & SERVICE AND NELSON & SONS, **25 Q. B. D. 552.** It has long been settled law that the Court will not grant specific performance of an agreement to refer; but if this argument is sound, it is difficult to see why there should not have been specific performance of a portion of the agreement that is to say, why one party should not have had a decree compelling the other party to proceed and appoint an arbitrator. But there is no authority for any such proposition . . . There never has been an order to attach a man for not appointing an arbitrator, and still less an order by the Court to appoint an arbitrator in default of his appointment.

It has been said that the law has been altered in that respect by the Act of 1889; but there is no ground for that contention unless it be based on s. 1; the other sections, namely, ss. 4, 5, and 6 do not touch this point. It certainly looks like a blot in the Act, that by reason of there being there no provision as to three arbitrators, as distinguished from two arbitrators and an umpire, ss. 4, 5, and 6, do not apply; but we cannot help that.—LINDLEY, L.J.

553. There may be an agreement to refer generally without naming the arbitrators; such an agreement was always irrevocable, and an action would always lie for its breach, although the Court could not compel either of the parties to proceed under it.—BOWEN, L.J.

4. —— Revocation of Submission.

JAMES *v.* JAMES, **22 Q. B. D. 669.** The Court has a discretion to revoke if there is reasonable ground for supposing that the arbitrator is going wrong. But in giving leave to revoke, it should be satisfied that a substantial miscarriage of justice will happen in the event of a refusal.—STEPHEN, J.

5. —— Revocation of Submission.

EAST AND WEST INDIA DOCK COMPANY *v.* KIRK AND RANDALL, **12 App. Cas. 738.** The Court has jurisdiction to give leave to

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ARBITRATION—*continued.*

revoke the submission if there is reasonable ground for supposing that the arbitrator is going wrong in point of law even in a matter within his jurisdiction.—LORD HALSBURY, L.C.

6. —— **Time for making Award—Public Health Act, 1875.**

In re YEADON LOCAL BOARD AND YEADON WATERWORKS COMPANY, **41 Ch. D. 52.** The time for making award is twenty-one days from reference, which may be extended for two months; and this applies to an umpire; and in his case the time from which the twenty-one days will run is the date when the arbitrators finally disagree.—[COTTON, LINDLEY and LOPES, L.JJ.]

7. —— **Arbitration and Award—Valuation.**

In re CARUS-WILSON AND GREENE, **18 Q. B. D. 10.** A valuer may be, in one sense, called an arbitrator, but not in the proper legal sense of the term. In the ordinary cases of arbitration there is a dispute which is referred. The object of the valuation, on the other hand, is to avoid disputes. There is nothing in the nature of a dispute when the valuer is appointed. It is a term of the agreement for sale that the timber shall be valued and that the purchaser shall take it at the valuation. It is a mere matter of fixing the price, not of settling a dispute.—LINDLEY, L.J.

See Land Clauses Consolidation Act, 1845. 4.

ARBITRATION ACT, 1889.

For amending and consolidating the enactments relating to arbitration.

See Arbitration. 3.

ARRESTMENT.

See Scotland.

ARTIZANS AND LABOURERS DWELLINGS.

See Housing of the Working Classes Act, 1890.

ASSIGNEE.

See Chose in action.
Landlord and Tenant. 3.

ASSIGNMENT.

See Landlord and Tenant. 2.

ASSIGNMENT OF DEBT—Charge—Judicature Act.

TANCRED *v.* DELAGOA BAY AND EAST AFRICA RAILWAY COMPANY, **23 Q. B. D. 240.** A "charge" is a very different thing from a complete assignment by way of mortgage: a charge is only an undertaking to pay out of a particular fund. (In argument.)

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ATTACHMENT—Service of Notice of Motion for.

HOWARTH *v.* HOWARTH, **11 P. D. 99.** Jessel, M.R., held that service of notice of motion for a writ of attachment upon the solicitors of the defendant on the record was sufficient, the original order having been personally served on him.—COTTON, L.J.

AUDITOR.

See Company. 7.

AUTHOR.

See Copyright. 1.

AUTHORITY, APPLICATION OF.

Ex parte BLANCHETT. *In re* KEELING, **17 Q. B. D. 306.** When the words of a judgment in one case are relied upon as an authority governing another case, you should endeavour to find out, not only the particular facts to which those words were applied, but the principle of the judgment.—LORD ESHER, M.R.

AVERAGE.

See Insurance, Marine. 1.

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B.

BAILEE.

See Jus tertii.

BANKER.

1. —— **Bill of Exchange—Bills of Exchange Act, 1882.**

VAGLIANO BROTHERS *v.* GOVERNOR AND COMPANY OF BANK OF ENGLAND, **22 Q. B. D. 116.** It was there held in the Exchequer Chamber that the acceptance of a bill of exchange payable at a banker's is tantamount to an order to the banker to pay the bill to any person who, according to the law-merchant, can give a valid discharge for it. Therefore, if the bill is payable to order, it is an authority to pay the bill to any person who becomes the holder by a genuine indorsement. "The bankers," says Parke, B., in his judgment, "cannot charge their customer with any other payments than those made in pursuance of that authority." They cannot debit him with a payment made to one who claims through a forged indorsement, and so cannot give a valid discharge for the bill, unless, indeed, there are circumstances amounting to a direction from the customer to the bankers to pay the bill without reference to the genuineness of the indorsement, or equivalent to an admission of its genuineness inducing the bankers to alter their position so as to preclude the customer from shewing it to be forged. This throws on the bankers the responsibility of deciding on the genuineness of indorsements, a difficult and in many cases an almost impossible task. But if they wish to avoid that responsibility they can adopt the course indicated by Parke, B., in the last mentioned case: "They may require their customers to domicile their bills at their own offices and to honour them by giving a cheque on the banker."—CHARLES, J.

[*See* 1891, A. C., p. 107.]

2. —— **Pledge—Deposit by Money-dealer of his Customer's Securities.**

EARL OF SHEFFIELD *v.* LONDON JOINT STOCK BANK, **13 App. Cas. 342.** The evidence discloses that it is customary for persons in the position of Mozley [the money-lender] to get large advances from banks in the city of London, by transferring their customers' securities in mass to cover the whole advance; they engaging to keep the securities up to a certain limit of value, the bank, on the other hand, stipulating for the right to realise, at any time

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BANKER—*continued.*

for its own protection. It is, moreover, an essential condition of these transactions that the money-lenders shall be permitted to withdraw, from time to time, such securities as may be required in the course of their business, upon the footing of immediately restoring them, or substituting other equivalent securities for them. In fact, great part of their business consists in lending, at a higher rate of interest, moneys which they borrow from the banks, at a lower rate, upon the securities which they take from their own borrowers; and it is necessary to the continuance of such a course of dealing that they shall be able to get back a customer's securities from the bank, whenever he has the right, and is prepared, to release them. It was held by the Court of Appeal (in my opinion rightly) that the practice thus prevailing between money-lenders and the banks has not grown into a proper commercial custom. In the language of Cotton, L.J., there is "no such general custom proved as would bind anyone dealing with a money-dealer, unless it was shewn that he had notice of the practice, and he was proved to have dealt with him on the footing of that practice." The evidence also established that, in the case of the advances for which the appellant's property was pledged to them, the respondents recognised and dealt with Mozley as a member of the money-lending class, and that he was permitted to exercise the usual privilege of withdrawing securities, and replacing them with others. But it is proved, and not disputed, that the appellant had no knowledge of the practice, and that he was not aware, before Mozley became bankrupt, that his property had been pledged for any greater amount than he had authorised Easton to borrow on its security. Mozley, accordingly, stood in this position. In a question with the appellant he had a perfect right to use his own interest in the securities as a source of credit: and he had no authority and no right to deal with the appellant's interest by way of pledge or otherwise. At the same time the appellant, by his own acts, had invested Mozley with an apparent dominion and authority which would have enabled him effectually to dispose of the securities to persons who had no occasion to suspect his limited title.—LORD WATSON.

See Bill of Exchange. 6.

Shares.

BANKRUPTCY.

1. —— **After-acquired Property—Right of Action—Property vesting in Trustee.**

COHEN *v.* MITCHELL, **25 Q. B. D. 266.** Of course all the property,

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BANKRUPTCY—*continued.*

which belongs to the bankrupt at the time of the bankruptcy, becomes at once the property of the trustee. But does all the property acquired by the bankrupt after his bankruptcy belong to the trustee absolutely, so that the bankrupt is divested of all interest and property in it, or does it remain the property of the bankrupt, so that at any rate he can deal with it until the trustee interferes? In the case of property coming under the bankruptcy, if the bankrupt were to endeavour to maintain an action, in which the defendant was not estopped from denying the bankrupt's property in the subject-matter of the action, it would be a good plea that the property is not his, but is vested in the trustee; but with regard to after-acquired property, it has been held that such a plea would be bad unless it went on to shew that the trustee had intervened before the transaction in respect of which the action is brought. That seems to be conclusive to shew that the bankrupt has a property, whether absolute or not is immaterial, in such things till the trustee interferes.

267. Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy, with any person dealing with him *bonâ fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee. It will be seen, I think, from the wording of that proposition, that the stress of *bona fides* is laid entirely and solely on the person dealing with the bankrupt; and if he has dealt in good faith, the question of whether the bankrupt, as between himself and the creditors, is also dealing in good faith is immaterial.—Lord Esher, M.R.

2. —— Assignment of Bankrupt's Property to Trustee.

In re Spackman. *Ex parte* Foley, **24 Q. B. D. 738.** No declaration of trust or mere contract is an act of bankruptcy within the meaning of those words in the sub-section. There must be an assignment for the benefit of creditors according to the well-established meaning of the phrase in Bankruptcy law, before the Act, viz. an assignment of the property by deed to a trustee for the benefit of creditors . . . Whether this transaction amounted to a declaration of trust for the benefit of creditors, or a contract that the property should be dealt with in a certain way for their benefit, or whatever it was, unless it was an assignment of the whole of the debtor's property for the benefit of creditors, it was not an act of bankruptcy.—Lord Esher, M.R.

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BANKRUPTCY—*continued.*

3. —— "Conduct of Affairs" of Bankrupt—Future prospects of Property.

In re JONES. *Ex parte* JONES, **24 Q. B. D. 594.** The conclusion I draw from the use of the word "affairs" in sect. 28, and from this particular condition in sub-s. 6, is that it was not the intention of the legislature that a man who was not able to pay his debts at a given time, but who had reasonable expectations of acquiring property afterwards, should take advantage of the Act to get rid of his debts on payment of a small dividend, or perhaps none at all; and, by getting an unconditional discharge, put himself in a position to enjoy, without molestation from his creditors, that property which he had every reason to believe would shortly devolve upon him. Let me take the very common case of a man who has reason for thinking that he will take large pecuniary benefits under the will of his father, or an uncle, or some other wealthy relative. Such expectations are very naturally shared by those who are acquainted with his position; and tradesmen and others are ready to give such a man credit in the expectation of being paid when these expectations are realized. If the contention of the appellant is correct, such a man might, after he had enjoyed the benefit of this credit, and when all his creditors were content to wait till these expectations were realized, file his petition in the Bankruptcy Court, and in the absence of fraud demand his discharge without paying his creditors any dividend, thus leaving himself free to enjoy the benefits of his relative's generosity, without sharing a sixpence of it with those who had trusted him in the expectation of being paid out of this fund. That such a state of things could be brought about without any actual fraud on the part of the expectant heir is obvious to anyone with the least knowledge of the world, and of the way in which credit is given to persons of that class.—CAVE, J.

4. —— Discharge—Circumstances to be considered.

In re BARKER. *Ex parte* CONSTABLE. *In re* JONES. *Ex parte* JONES, **25 Q. B. D. 293.** Does it follow that the judge may take into consideration, upon the application for a discharge, everything which has been done by the bankrupt during his past life? It seems to me that there must be some limit; and I think the judge ought not to take into his consideration, conduct which could not have had anything to do with the bankruptcy, either in producing it or in affecting it in any way after its commencement.—LORD ESHER, M.R.

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BANKRUPTCY—*continued.*

5. —— **Disclaimer of Lease by Trustee—Sub-lease by way of Mortgage—Vesting Order.**

In re FINLEY. *Ex parte* CLOTHWORKERS' COMPANY, **21 Q. B. D. 487.** If no vesting order is made, the lease will be determined under sub-s. 2, the sub-lease will be determined under sub-s. 6, and the lessor will take the property freed from both lease and sub-lease. This appears to us to be the logical consequence of the Act, and it is impossible not to see that it is a very startling result. It will very seriously affect the old practice of taking securities on leasehold property by way of sub-demise.—LINDLEY, L.J.

6. —— **Dwelling-house—One Creditor.**

In re HECQUARD. *Ex parte* HECQUARD, **24 Q. B. D. 76.** The trustee in a bankruptcy may be able to set aside transactions and get in assets which could not be set aside or got in without an adjudication of bankruptcy. The mere fact that a man has only one creditor is not a sufficient ground for saying that bankruptcy proceedings cannot be maintained against him.—LINDLEY, L.J.

7. —— **Evidence—Criminatory Answer.**

In re A SOLICITOR, **25 Q. B. D. 24.** From early time, persons have been obliged to answer questions that criminated them. That obligation was for a long while qualified by the protection given by the rule of law that answers which under particular statutes a man could not refuse to make (although at common law he could do so) should not be used as evidence against him in proceedings founded upon such answers.

25. The very point is now settled by the Bankruptcy Act, 1888, s. 17, enacting that the debtor shall be examined upon oath, and that it shall be his duty to answer all such questions as the Court may put or allow to be put to him, and that the answers shall be read over and signed by the debtor, and "may thereafter be used as evidence against him."

Therefore, it is plain that a bankrupt is bound to answer questions which the Court allows to be put, and that the answers, although they tend to criminate him, may, by the express words of the Act of Parliament, afterwards be read in evidence against him.—LORD COLERIDGE, C.J.

8. —— **Fraudulent Conveyance—Intent to delay, hinder, or defraud Creditors.**

Ex parte MERCER. *In re* WISE, **17 Q. B. D. 299.** The assumption that, if the natural or necessary effect of what the settlor did was to defeat or delay his creditors, the Court must find that he

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BANKRUPTCY—*continued.*

actually had that intent is to my mind monstrous. That proposition or doctrine I entirely abjure.—LORD ESHER, M.R.

301. The language which has been used in a great many cases, that a man must in point of law be held to have intended the necessary consequences of his own acts, is apt to mislead, by confusing the boundary between law and fact, and by consequences which can be foreseen with those which cannot.—LINDLEY, L.J.

9. —— **Judgment.**

In re FLATAU. *Ex parte* SCOTCH WHISKY DISTILLERS, **22 Q. B. D. 86.** The Court of Bankruptcy has gone behind a judgment, obtained by fraud, collusion, or mistake, but not after issues tried out before a Court.—FRY, L.J.

10. —— **Official Receiver.**

In re WEBBER. *Ex parte* WEBBER, **24 Q. B. D. 318.** He must not be a partisan in the matter; he ought to stand by and see only that that which is right is done to all parties.—LORD ESHER, M.R.

11. —— **Scheme of Arrangement.**

Ex parte BISCHOFFSHEIM. *In re* AYLMER, **19 Q. B. D. 36.** The creditors get nothing more under the scheme than they would have had if the matter had proceeded in bankruptcy. For that reason alone the scheme is a bad one, and ought not to be approved by the Court.—LORD ESHER, M.R.

12. —— **Trustee in.**

Ex parte BROWN. *In re* SMITH, **17 Q. B. D. 492.** Because committee of inspection choose to sanction the course adopted by the trustee, he is not justified in entering into litigation or acting in a manner which the judge may probably consider to be vexatious and frivolous, and wasteful of the property which he has to administer.—LORD ESHER, M.R.

See Absolute Gift.

BANKRUPTCY ACT, 1890.

To amend the Law of Bankruptcy.

BIAS.

See Disqualification.
Judicial Inquiry.

BILL OF EXCHANGE.

1. ——

In re COMMERCIAL BANK OF SOUTH AUSTRALIA, **36 Ch. D. 529.** Five per cent. is the rate of interest payable upon bills in this country when the rate is not specially agreed upon.—NORTH, J.

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BILL OF EXCHANGE—*continued.*

2. ——

GOSLINGS AND SHARPE *v.* BLAKE, **23 Q. B. D. 329.** If a bill of exchange or promissory note is, on the face of it, made to bear interest, that interest runs on till payment.—LORD ESHER, M.R.

3. —— **Acceptance.**

ODELL *v.* CORMACK, **19 Q. B. D. 226.** The bill was drawn on Cormack Brothers, a firm consisting of one person only, viz., Margaret Cormack. I take it to be clear beyond all doubt that she might have accepted a bill drawn on Cormack Brothers in her own name, and have bound herself by such acceptance just as much as if she had used the style of the firm, and of course what she might have done herself she might authorize anybody else to do for her.—HAWKINS, J.

4. —— **Acceptance—Bills of Exchange Act, 1882.**

DECROIX VERLEY ET CIE *v.* MEYER, **25 Q. B. D. 347.** If a bill drawn by one merchant upon another is presented for acceptance, the drawee has no right to alter the bill. If he is not willing to accept the bill he may refuse to do so. If he wishes to accept conditionally or in a qualified manner, he may express the acceptance accordingly; but he ought not to alter the bill. A person who accepts a bill which would, according to the terms in which it is drawn, entitle the payee to indorse it over, must qualify such acceptance in plain terms if he wishes to prevent the bill from being negotiable.

348. As to the argument that the bill and the acceptance must be read together so as to make the acceptance a part of the bill, I protest that the acceptance is not part of the bill. When the bill is accepted the two together make the contract; but the acceptance is distinct from the bill, and the Bills of Exchange Act recognises the distinction.—LORD ESHER, M.R.

349. An acceptance must be construed most strongly against the acceptor.—LINDLEY, L.J.

350. What do the words "in favour of Flipo" mean? They mean, as it seems to me, "payable to Flipo or order." A bill drawn in favour of a person is a bill drawn payable to such person or his order. If that be so the addition of the word "only" has no effect on the signification. If the words had been "payable to Flipo only," the case would have been different, and possibly the acceptance would have been qualified. In this case I think the acceptors have missed their mark.—BOWEN, L.J. [Affirmed [1891] A. C. 520.]

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BILL OF EXCHANGE—*continued.*

5. —— Acceptance—Indorsee.

In re BARNARD. EDWARDS *v.* BARNARD, **32 Ch. D. 450.** The plaintiff, as the indorsee of the bill, can only claim on the bill according to its form.—COTTON, L.J.

451. By law, the acceptance only binds the parties to whom the bill is addressed.—COTTON, L.J.

452. The indorsee of a bill has no right arising out of the consideration for the bill.—LINDLEY, L.J.

6. —— Banker—Bills of Exchange Act, 1882.

VAGLIANO BROTHERS *v.* BANK OF ENGLAND, **23 Q. B. D. 258.** In *Gibson* v. *Hunter*, the House of Lords appears to have expressly decided that it was only where the fictitious character of the bill was known to the acceptor at the time of acceptance that the bill could be treated against the acceptor as a bill payable to bearer. —BOWEN, L.J.

262. The responsibility of verifying the indorsements remained, therefore, with the bank. In the case of a genuine bill, the bank would have had to bear this responsibility. There was nothing in the letters of indication to relieve them from it here.—BOWEN, L.J.

See Bankers. 1.

BILLS OF EXCHANGE ACT, 1882.

See Bankers. 1.
Bill of Exchange. 4.
Bill of Exchange. 6.

BILL OF LADING—Charter-parties.

LEDUC *v.* WARD, **20 Q. B. D. 479.** Where there is a charter-party, as between the shipowner and the charterer, the bill of lading may be merely in the nature of a receipt for the goods, because all the other terms of the contract of carriage between them are contained in the charter-party; and the bill of lading is merely given as between them to enable the charterer to deal with the goods while in the course of transit; but, where the bill of lading is indorsed over, as between the shipowner and the indorsee, the bill of lading must be considered to contain the contract, because the former has given it for the purpose of enabling the charterer to pass it on as the contract of carriage in respect of the goods.—LORD ESHER, M.R.

See Ship. 4.
Ship. 5.
Ship. 7.

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BILL OF SALE.

1. ——

Ex parte STANFORD. *In re* BARBER, **17 Q. B. D. 270.** A bill of sale is in accordance with the prescribed form if it is substantially in accordance with it, if it does not depart from the prescribed form in any material respect. But a divergence only becomes substantial or material when it is calculated to give the bill of sale a legal consequence or effect, either greater or smaller, than that which would attach to it if drawn in the form which has been sanctioned, or if it departs from the form in a manner calculated to mislead those whom it is the object of the statute to protect.

271. Whatever form the bill of sale takes, the form adopted by it in order to be valid must produce, not merely the like effect, but the same effect—that is to say, the legal effect, the whole legal effect, and nothing but the legal effect which it would produce if cast in the exact mould of the schedule.—BOWEN, L.J.

2. —— **After-acquired Property.**

THOMAS *v.* KELLY, **13 App. Cas. 512.** It is obvious that a bill of sale which purports to assign after-acquired property, whether in the form of a covenant (its true legal effect), or, as stated specifically in words, as part of the security, is not in accordance with the "form," and therefore void.—LORD HALSBURY, L.C.

515. A sale of goods, or grant or mortgage of goods, could at common law be effected without writing; but it should be accompanied by possession, and an assignment of non-existent property, that is, of property which might or might not be acquired in the future, was at common law inoperative; but if for value, it was in equity regarded as a contract of which specific performance might be enforced when (if ever) the thing came into actual existence.—LORD FITZGERALD.

517. The decision of the Court of Appeal in this case, affirmed by your Lordships, prohibits in effect the assignment of future-acquired property in bills of sale coming within sect. 9 of the Act of 1882; and I may add that it accomplishes a most desirable result.—LORD FITZGERALD.

3. —— **After-acquired Property, assignment of—Future Book Debts.**

THE OFFICIAL RECEIVER *v.* TAILBY, **17 Q. B. D. 88.** An assignment of all the book debts which might become due is valid, and operates to pass the beneficial interest in a debt which came into existence after the assignment.

92. If future stock-in-trade may be assigned, why may not

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BILL OF SALE—*continued.*

future book debts? The future stock-in-trade takes the place of and is substituted for the present stock-in-trade. The book debt arises from the disposal of and takes the place of stock-in-trade present or future.—MATHEW, J.

4. —— **After-acquired Property—Future Book Debts—Assignment of.**

TAILBY *v.* OFFICIAL RECEIVER, **13 App. Cas. 533.** The rule of equity which applies to the assignment of future choses in action is, as I understand it, a very simple one. Choses in action do not come within the scope of the Bills of Sale Acts, and though not yet existing, may nevertheless be the subject of present assignment. As soon as they come into existence, assignees who have given valuable consideration will, if the new chose in action is in the disposal of their assignor, take precisely the same right and interest as if it had actually belonged to him, or had been within his disposition and control at the time when the assignment was made. There is but one condition which must be fulfilled in order to make the assignee's right attach to a future chose in action, which is, that, on its coming into existence, it shall answer the description in the assignment, or, in other words, that it shall be capable of being identified as the thing, or as one of the very things assigned. When there is no uncertainty as to its identification, the beneficial interest will immediately vest in the assignee. Mere difficulty in ascertaining all the things which are included in a general assignment, whether *in esse* or *posse*, will not affect the assignee's right to those things which are capable of ascertainment or are identified.—LORD WATSON.

5. —— **Chattels held under an oral agreement, by which title given.**

NEWLOVE *v.* SHREWSBURY, **21 Q. B. D. 44.** We have, I think, an oral agreement to give a security on these goods, which is unaffected by the Bills of Sale Acts, and entitles the defendant, having the possession, to retain it against the plaintiffs.—LORD ESHER, M.R.

45. The agreement to give the security seems to me to have been by oral agreement antecedent to the receipt, and I think that the defendant upon obtaining possession of the machine is entitled to defend it by proof of such agreement without reference to the receipt at all. The right to possession conferred by such oral agreement cannot, I think, under these circumstances be upset by reference to the receipt. Where a person in possession of goods can only prove his right to possess them by a document

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BILL OF SALE—*continued.*

which is a bill of sale within the Bills of Sale Act, 1878, s. 4, and which is not registered, he cannot retain them against the person entitled to them subject to his claim. But, if the right to possess the goods can be proved by parol without reference to any document, the Bills of Sale Acts have no operation. Where there is a document expressing the agreement between the parties, parol evidence of their agreement cannot be given; and the possession must be referred to the document, and, if that is void, possession under it is of no avail.—LINDLEY, L.J.

6. —— **Defeasance.**

BLAIBERG *v.* BECKETT, **18 Q. B. D. 101.** Defeasance is something which defeats the operation of a deed.—LORD ESHER, M.R.

103. Defeasance, to my mind, means something in the nature of redemption.—LINDLEY, L.J.

7. —— **Fictitious Sale, substance of transaction to be looked at.**

In re WATSON. *Ex parte* OFFICIAL RECEIVER IN BANKRUPTCY, **25 Q. B. D. 37.** I do not deny that people may evade an Act of Parliament if they can, but, if they attempt to do so by putting forward documents which affect to be one thing when they really mean something different, and which are not true descriptions of what the parties to them are really doing, the Court will go through the documents in order to arrive at the truth. So when the transaction is in truth merely a loan transaction, and the lender is to be repaid his loan and to have a security upon the goods, it will be unavailing to cloak the reality of the transaction by a sham purchase and hiring. It will be a question of fact in each case whether there is a real purchase and sale complete before the hiring agreement. If there be such a purchase and sale, in fact, and afterwards the goods are hired, the case is not within the Bills of Sale Act. The document itself must be looked at as part of the evidence; but it is only part, and the Court must look at the other facts, and ascertain the actual truth of the case.—LORD ESHER, M.R.

8. —— **Hire and Purchase Agreement.**

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY *v.* NORTH CENTRAL WAGON COMPANY, **13 App. Cas. 560.** The object of the earlier Bills of Sale Acts was entirely different from that of 1882. The former enactments were designed for the protection of creditors, and to prevent their rights being affected by secret assurances of chattels which were permitted to remain in

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BILL OF SALE—*continued.*

the ostensible possession of a person who had parted with his property in them. The bills of sale were therefore made void only as against creditors or their representatives. As between the parties to them they were perfectly valid. The purpose of the Act of 1882 was essentially distinct. It was to prevent needy persons being entrapped into signing complicated documents which they might often be unable to comprehend; and so being subjected by their creditors to the enforcement of harsh and unreasonable provisions.—LORD HERSCHELL.

567. There is all the difference in the world between a mortgage and a sale with a right of repurchase.—LORD MACNAGHTEN.

9. —— Invoice and Receipt—Documents not constituting an assurance of Chattels.

NORTH CENTRAL WAGON COMPANY *v.* MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY, **35 Ch. D. 205.** The Bills of Sale Act of 1882 does not avoid transactions; it does not avoid parol agreements; it does not avoid anything except documents which are defined by the interpretation clause of the Act of 1854 in the first place, and subsequently by the interpretation clause of the Act of 1878. But if, independently of a document, the rights of the parties have been effectively altered or dealt with either in law or in equity, avoiding the document can produce no result—it cannot operate to the disadvantage of that which stands *proprio vigore* independently of the document.—BOWEN, L.J.

10. —— Maintenance of Security.

FURBER *v.* COBB, **18 Q. B. D. 495.** The covenant to replace and repair articles destroyed, injured or deteriorated, was necessary for maintaining the security, and the bill of sale was not void because power was given to seize on a breach of that covenant.

But the bill of sale was void because it authorized the grantees to retain their commission as auctioneers.—LORD ESHER, M.R., SIR J. HANNEN, FRY, L.J.

The covenant not to remove the chattels without the consent of the grantees, was necessary for maintaining the security, and semble, the unqualified covenant to produce the receipts for rent, rates, and taxes on demand was also necessary.—SIR J. HANNEN.

Semble, if a bill of sale contains a power to seize in an event not authorized by the Act, the insertion of a proviso that the goods shall not be liable to seizure for any cause other than those specified in sect. 7 of the Act, will not render the deed valid.

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BILL OF SALE—*continued.*

11. —— Mortgage—Trade Machinery.

In re YATES. BATCHELDOR *v.* YATES, **38 Ch. D. 128.** The trade machinery simply follows the land as the shadow follows the substance.

129. I agree that if a mortgagee desires to have the power to sell the trade machinery separately he must have a bill of sale of the trade machinery, which would give him the power to sell and deal with it as trade machinery.—BOWEN, L.J.

12. —— Pledge of Goods—Document containing terms.

MILLS *v.* CHARLESWORTH, **25 Q. B. D. 425.** Reliance was placed on the decision of this Court in *Ex parte Hubbard.* It is, however, to be observed that in that case there was a physical change of possession of the goods; and the Court held that the pledge there effected could be proved without reference to any written document; and that the pledge so proved was not invalidated by the non-registration of a contemporaneous document, which was viewed by the Court as at most a record of what had taken place, and as regulating the rights of the pledgee under a pledge created and proved by parol. In this case, however, there was no physical change of possession of the goods. In point of law possession of goods may be changed by agreement without any physical change in their position, or in the position of the person who actually guards them. The right to possession may be transferred by agreement, and the character in which the custodian holds them may be changed by attornment. But the agreement by which this change in possession was effected was reduced into writing, and cannot be proved apart from the writing. Without the writing Charlesworth cannot prove his right to possess as against Wilson, the owner of the goods. This at once makes the letter essential to the proof of Charlesworth's title, and brings the letter within the definition of a bill of sale.—LINDLEY, L.J.

426. Where there are goods pledged as security for a loan and delivered to the pledgee, a document that merely records the transaction, and regulates the rights of the pledgee as to the sale and return of the goods, is not a bill of sale. The reason for the decision is that the document is only a record of a transaction which can be proved without reference to it. In this case, in my opinion, the document was an essential part of the transaction, which could not be made out independently of the writing.—LOPES, L.J.

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BILL OF SALE—*continued.*

13. —— Sale or Hire agreements.

NORTH CENTRAL WAGON COMPANY *v.* MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY, **32 Ch. D. 495.** If there had been only that agreement, and if there had been nothing before the Court but that agreement, then it would perhaps have fallen within the principle which regulates contracts that have become very common nowadays—namely, contracts for the sale or hire of furniture in a house, where the stipulation is that you shall pay a certain sum by instalments, and if you pay all the instalments, then the goods which are at present let to you shall be yours out and out. That is no bill of sale; that is assailable under none of the principles of the Bills of Sale Act.—BACON, V.C.

14. —— Statutory Form.

COCHRANE *v.* ENTWISTLE, **25 Q. B. D. 120.** The rule laid down in *Ex parte Stanford* is, that you are to take the statutory form and the instrument which is in question, and to consider whether the two differ substantially in their legal effect—whether the one has a greater or a less legal effect than the other.—FRY, L.J.

See Pledge. 2.

BOARD OF AGRICULTURE, 1889.

For establishing a Board of Agriculture for Great Britain.

BONUS DIVIDEND.

See Company. 2.

BOOK DEBTS.

See Bill of Sale. 3.
Bill of Sale. 4.

BOUNDARIES, CONFUSION OF.

See Copyholds. 1.
Rent-charge.

BOVILL'S ACT.

See Partnership. 2.

BOYCOTTING.

See Conspiracy. 2.

BRIBES.

See Principal and Agent. 5.

BROKER—Estoppel.

WILLIAMS *v.* COLONIAL BANK. WILLIAMS *v.* LONDON CHARTERED BANK OF AUSTRALIA, **38 Ch. D. 404.** Where a third

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BROKER—*continued.*

person has entrusted goods or the documents of title to goods to an agent who in the course of such agency sells or pledges the goods, he should be deemed by that act to have misled anyone who *bonâ fide* deals with the agent and makes a purchase from or an advance to him without notice that he was not authorized to sell or to procure the advance.—LINDLEY, L.J.

409. The estoppel must be found, if anywhere, in some express or implied representation, or, what perhaps comes to the same thing, negligent conduct which amounts to such a representation. —BOWEN, L.J.

See Ship. 5.

BUILDING AGREEMENT—Separate Leases.

LOWTHER *v.* HEAVER, **41 Ch. D. 248.** When right to a lease accrues, in ordinary cases the several houses are no longer held on the terms of the building agreement, but on the terms of the lease.

BUILDING ESTATE.

See Lessor and Lessee. 3.

BUILDING SOCIETY—Directors acting ultra vires.

CULLERNE *v.* LONDON AND SUBURBAN GENERAL PERMANENT BUILDING SOCIETY, **25 Q. B. D. 488.** On looking carefully at the statutes by which these societies are governed, it certainly does appear that building societies can only advance money on the security of landed property, freehold, copyhold, or leasehold. The later Act, 37 & 38 Vict. c. 42, ss. 13 and 25, is to the same effect, except that the public funds are added. The 8th rule must be construed with reference to these enactments, and if it authorizes advances on other securities, or on no security, it must to that extent be regarded as contrary to law and invalid. The resolutions founded upon that rule, and authorizing advances other than on the security mentioned in the statutes, must also be treated as of no validity. No director, therefore, who has, in fact, advanced money of the society upon any other security than land, can avail himself either of the rule or of the resolutions as a defence to an action by the society for the restitution of the money so advanced. Nor does Rule 29, relating to the indemnity of the directors, extend to acts which are *ultra vires*, and beyond the powers which the society itself could confer upon them.—LINDLEY, L.J.

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BURIAL.

See Ecclesiastical Law. 1.
Ecclesiastical Law. 3.

BURIAL, RIGHT OF—Erection of Monument—Churchyard.

McGough *v.* Lancaster Burial Board, **21 Q. B. D. 327.** What rights exist at common law in the case of the burial of a parishioner in a parish churchyard? It appears that at common law the freehold of the parish churchyard, as well as the church, is vested in the incumbent, and, subject to certain personal rights belonging to himself, the object for which he so holds it is the burial of the parishioners. The erection of monuments in the churchyard in the ordinary course is a matter of habitual practice, but as a matter of law, strictly speaking, the consent of the ordinary would seem to be a necessary condition of the legality of their erection. It is true that, as a matter of practice, where the incumbent's consent has been obtained in the first instance, the consent of the ordinary is to be implied, and after the lapse of a reasonable time must be taken to have been given. Therefore, it is to be observed that the law does not give the parishioner power to decide what shall be placed on the grave, but the ultimate control over that is at common law reserved to the ordinary.—Bowen, L.J.

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C.

CANALS.

See Railway and Canal Traffic Act, 1888.

CANONS.

See Ecclesiastical Law. 4.

CARRIER.

See Railway Company. 3.

CHAIRMAN OF MEETING—Amendment to resolution—Public Meeting.

HENDERSON *v.* BANK OF AUSTRALASIA, **45 Ch. D. 346.** The chairman could not put any resolution which was not within the scope of the notice calling the meeting; but this amendment proposed by Mr. Henderson was within the notice calling the meeting, and therefore might properly be put before the meeting for consideration. I think, then, that the chairman was entirely wrong in refusing to put the amendment, and that the resolutions which were passed cannot be allowed to stand, because the chairman, under a mistaken idea as to what the law was which ought to have regulated his conduct, prevented a material question from being brought before the meeting.—COTTON, L.J.

347. The meeting was called to consider certain proposed amendments in the deed of settlement, and to conduct it on the plan that no amendment should be proposed to any of the proposals, so that each resolution should be taken as it stood or rejected, was to conduct the meeting under a very serious misapprehension of the rights of the shareholders, and of their powers of discussion.—FRY, L.J.

CHAMPERTY AND MAINTENANCE.

JAMES *v.* KERR, **40 Ch. D. 456.** From very early times it has been a grave offence against the law for anyone to intermeddle in litigation in which he is not interested.—KAY, J.

That species of maintenance, which is called champerty, viz., the unlawful maintenance of a suit in consideration of a bargain for part of the thing, or some profit out of it.—SIR W. GRANT, KAY, J.

CHARGE.

See Assignment of Debt.

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CHARGING ORDER.

BRERETON *v.* EDWARDS, **21 Q. B. D. 488.** A charging order may be made by a judge of the Queen's Bench Division upon cash standing to the credit of the debtor in the Chancery Division in the name of the Paymaster-General.

Such an order may be made *ex parte*, and in order to give effect to it, it is not necessary to obtain a stop order or to obtain the appointment of a receiver; but notice given to the Paymaster-General will be sufficient to secure priority.

CHARITABLE PURPOSES.

THE QUEEN *v.* COMMISSIONERS OF INCOME TAX, **22 Q. B. D. 307.** I cannot help thinking that in the minds of all ordinary persons charity implies the relief of poverty, and I think there must be in the mind of the donor an intention to relieve poverty. . . . A charitable purpose is not the less so because it is religious.—LORD ESHER, M.R.

316. All gifts for public purposes, whether local or general, are gifts to charitable uses. . . . . But what does the expression "charitable purposes" mean in the English language in its ordinary popular sense? I think the purpose must be benevolent, and in relief of those in want. I should include mental and religious want.—LOPES, L.J.

CHARITABLE TRUST—Personal liability of Trustees.

ANDREWS *v.* M'GUFFOG, **11 App. Cas. 324.** With respect to the general principle on which the Court deals with the trustees of a charity, though it holds a strict hand on them when there is wilful misapplication, it will not press severely upon them when it sees nothing but mistake. It often happens from the nature of the instrument creating the trust that there is great difficulty in determining how the funds of a charity ought to be administered. If the administration of the funds, though mistaken, has been honest and unconnected with any corrupt purpose, the Court, while it directs for the future, refuses to visit with punishment what has been done in the past. To act on any other principle would be to deter all prudent persons from becoming trustees of charities.—LORD ELDON, LORD WATSON.

325. In both countries (*id est*, England and Scotland), this principle has prevailed, namely, that there shall be a very enlarged administration of charitable trusts. You look to the charity which is intended to be created, and you distinguish between it

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CHARITABLE TRUST—*continued.*

and the means which are directed for its accomplishment.—LORD WESTBURY, LORD WATSON.

326. The only administrative error which the respondents have committed consists in their having honestly mistaken the mode in which the testator's purpose was meant to be attained.—LORD WATSON.

CHARITABLE TRUSTS ACT, 1853—Leave of Commissioners before commencing action.

RENDALL *v.* BLAIR, **45 Ch. D. 152.** Speaking broadly, I think that this section does not deal with or touch actions which are brought to enforce common law rights, whether such rights arise out of contract, or out of tort, or out of common law duty. I ought to say, I think also that it does not apply to suits by individuals whose object is solely to obtain equitable relief in respect of common law rights.

155. Such a construction would be to place the Charity Board in the remarkable position of a Court without appeal upon the subject of common law rights, so that a man who had a claim against a charity, which he could only enforce, or the apt relief in respect of which was an injunction from the Court of Chancery in regard to a threatened wrong, would find himself absolutely at the mercy of an irresponsible board. Such legislation is possible; but I think we ought not to assume without the clearest language that Parliament intended to destroy common law rights of Her Majesty's subjects by placing them at the mercy of an irresponsible tribunal or irresponsible department of the state.

157. The common law question may involve the construction of a deed, or may incidentally involve the question whether the managers who are seeking to oust him are really properly appointed. But, as I said before, the mere fact that such questions incidentally arise, does not seem to me to bring the case within the section.

158. The enactment is directory; it does not oblige the Court to close the gates of mercy upon the applicant, but enables it to stay proceedings until that consent, which as a matter of duty ought to be obtained in the first instance, is obtained at last.—BOWEN, L.J.

CHARITABLE USES.

See Mortmain and Charitable Uses Act, 1888.

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CHARITY.

1. —

In re CHRISTCHURCH INCLOSURE ACT, **38 Ch. D. 530.** The trust, being created by statute, cannot be held invalid on the ground of perpetuity or on any other ground. It is a perpetual trust for the occupiers for the time being of those cottages. But such a trust, unless it is a charitable trust, is one of a very anomalous character, and one which it will be extremely difficult to give full effect to in all contingencies; for example, in the case of the destruction of some of the cottages. . . . If this trust can be properly regarded as a charitable trust, it ought, in our opinion, to be so regarded. Had it not been for the decision in the House of Lords in *Goodman* v. *Mayor of Saltash*, we should have felt great difficulty in holding this trust to be a charitable trust. For, although the occupiers of these cottages may have been, and perhaps were, poor people, the trust is not for the poor occupiers, but for all the then and future occupiers, whether poor or not. Moreover, the trust is not for the inhabitants of a parish or district, but only for some of such persons. The trust is for a comparatively small and tolerably well-defined class of persons. The class, however, though limited, is as to its members uncertain, and is liable to fluctuation, and the trust for the class is perpetual. —COTTON, LINDLEY, and BOWEN, L.JJ.

2. —

In re ST. STEPHEN, COLEMAN STREET. *In re* ST. MARY THE VIRGIN, ALDERMANBURY, **39 Ch. D. 498.** No doubt there may be bodies corporate or quasi-corporate, such as private clubs, or the Inns of Chancery, which have existed from ancient time, and hold property which is not the subject of a charitable trust; but the distinction in those cases is that, the purposes to which the property is devoted being of a private, and not a public, character, it is competent for the corporators at any time to put an end to them and divide the property amongst themselves.

501. Where you have a trust which, if it were for the benefit of private individuals or a fluctuating body of private individuals, would be void on the ground of perpetuity, yet if it creates a charitable, that is to say, a public, interest, it will be free from any obnoxiousness to the rule with regard to perpetuities.—KAY, J.

3. —

In re CHRISTCHURCH INCLOSURE ACT, **35 Ch. D. 370.** Where you have a trust which, if it were for the benefit of private individuals

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CHARITY—*continued.*

or a fluctuating body of private individuals, would be void on the ground of perpetuity, yet, if it creates a charitable, that is to say, a public, interest, it will be free from any obnoxiousness to the rule with regard to perpetuities.—STIRLING, J.

4. —— **Poverty.**

PEASE *v.* PATTINSON, **32 Ch. D. 158.** Poverty is not a necessary element to entitle a person to receive a charitable donation.—BACON, V.C.

CHARTERERS.

See Maritime Lien.

CHARTER-PARTIES.

See Bill of Lading.
Ship. 7.
Ship. 8.

CHATTELS.

See Interpleader.

CHILD.

See Habeas Corpus. 1.
Illegitimate Children.

CHILD-BEARING.

In re DAWSON. JOHNSTON *v.* HILL, **39 Ch. D. 164.** The impossibility of issue has come now to be fixed somewhere about the age of fifty-four, although the circumstances may still be inquired into.—CHITTY, J.

CHILDREN—Prevention of Cruelty to, and Protection of Children Act, 1889.

CHOSE IN ACTION—Assignees of a.

DOERING *v.* DOERING, **42 Ch. D. 206.** Such purchasers and transferees (assignees of a *chose in action*) are always exposed to great risk. They have been held to take subject to making good a breach of trust by a trustee, the vendor, although the breach of trust was subsequent to the purchase.—HALL, V.C.

See Married Woman. 1.

CHURCH—Repair of Tomb—Repair of Churchyard.

In re VAUGHAN. VAUGHAN *v.* THOMAS, **33 Ch. D. 192.** It is clearly for the benefit of the inhabitants of the parish that not only the fabric, but also that the ornaments of the church, whether in the shape of mural tablets or otherwise, should not be permitted

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CHURCH—*continued.*

to fall into a state of dilapidation and decay.—KINDERSLEY, V.C.; NORTH, J.

A testator providing for the repair of a family tomb is only ministering to his own private feeling or pride, or it may be to a feeling of affection he has for his own relations; and it is not for the benefit of the parish at large that a particular tomb should be kept in repair. But in respect of the repair of the churchyard as a whole, it is for their benefit.—NORTH, J.

See Ecclesiastical Law. 7.
Will. 1.

CHURCH DISCIPLINE ACT.

See Ecclesiastical Law. 2.

CHURCHYARD.

See Burial, right of.
Church.
Ecclesiastical Law. 3.

CLAY.

See Mines and other Minerals.

CLOGGING THE REDEMPTION.

See Mortgage. 9.

CLUB—Right of Members.

BAIRD *v.* WELLS, **44 Ch. D. 670.** The only questions which this Court can entertain are first, whether the rules of the club have been observed; secondly, whether anything has been done contrary to natural justice; and, thirdly, whether the decision complained of has been come to *bonâ fide.*

676. What is the jurisdiction of a Court of Equity as regards interfering at the instance of a member of a society to prevent his being improperly expelled therefrom? I have no doubt whatever that the foundation of the jurisdiction is the right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion, there is no such jurisdiction that I am aware of reposed in this country, at least in any of the Queen's Courts to decide upon the rights of persons to associate together when the association possesses no property. . . . I cannot imagine that any Court of justice could interfere with such an association if some of the members declined to associate with some of the others. That is to say, the Courts as such, have never dreamt of enforcing agreements strictly personal in their nature. . .

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CLUB—*continued.*

In such cases no Court of justice can interfere so long as there is no property, the right to which is taken away from the person complaining. If that is the foundation of the jurisdiction, the plaintiff, if he can succeed at all, must succeed on the ground that some right of property to which he is entitled has been taken away from him. That this is the foundation of the interference of the Courts as regards clubs, I think is quite clear. . . . The position appears to me to be this: each member is entitled by contract with the defendant Wells to have the personal use and enjoyment of the club, in common with the other members, so long as he pays his subscription, and is not excluded from the club under rule 17. That right is, as it seems to me, of a personal nature, such as, if infringed, may give rise to a claim for damages, but not such as the Court will enforce by way of specific performance or injunction.—STIRLING, J.

See Charity. 2.

COAL MINES REGULATION ACT, 1887.

COHABITATION.

See Husband and Wife. 6.

COLLATERAL ADVANTAGE.

See Mortgage. 1.

COLLATERAL AGREEMENT.

See Restrictive Covenant. 3.

COLLISION.

See Insurance, Marine. 2.
Maritime Lien.
Ship. 9.
Ship. 10.
Ship. 11.
Ship. 12.

COMBINATION.

See Conspiracy. 1.

COMITY OF NATIONS.

COLQUHOUN *v.* BROOKS, **21 Q. B. D. 57.** The English Parliament cannot be supposed merely by reason of its having used general words to be intending to do that which is against the comity of nations.—LORD ESHER, M.R.

COMMISSION.

See Cross-examination. 1.
Evidence. 1.

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COMMISSION, SECRET.

See Company. 18.
Principal and Agent. 6.

COMMISSION TO EXAMINE WITNESS.

THE PARISIAN, **13 P. D. 17.** In my opinion there is a material difference between a party to an action and an ordinary witness. One reason of that difference is that, if the deponent is resident abroad and is only a witness, it may be absolutely impossible for a party to produce him, and a great injustice may be done by ordering his production here. But there is a difference when the deponent is a party, for he may come or stay away at his own peril. Another consideration to be kept in sight in exercising this discretion is a question of convenience and expense. While it may be unreasonable to require the attendance here for cross-examination of a man resident in Brazil, it may be right to compel that of a party resident in France.—BUTT, J.

COMMISSIONERS FOR OATHS ACT, 1889.

COMMISSIONERS FOR OATHS AMENDMENT ACT, 1890.

To amend the Commissioners for Oaths Act, 1889.

COMMON EMPLOYMENT.

See Negligence. 2.

COMMON LAW.

1. ——

EMMENS *v.* POTTLE, **16 Q. B. D. 357.** Any proposition the result of which would be to shew that the Common Law of England is wholly unreasonable and unjust, cannot be part of the Common Law of England.—LORD ESHER, M.R.

2. —— Equity.

COMMISSIONERS OF INLAND REVENUE *v.* ANGUS, **23 Q. B. D. 589.** When you are contrasting "legally" and "equitably," "legal" must be understood to refer to Common Law, as distinguished from Equity. Therefore, "legally" transferred means transferred at Common Law, and "equitably transferred" means transferred according to Equity. Can there be a common law transfer of an equitable interest? It seems to me that there cannot. Common Law knows nothing about Equity, and does not deal with equitable interests.—LORD ESHER, M.R.

596. The Court of Chancery has acted only *in personam*, and compelled the vendor to do whatever was necessary to be done,

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COMMON LAW—*continued.*

either in this country or abroad, to transfer the property to the purchaser.—LINDLEY, L.J.

See Metropolis.

COMPANIES CLAUSES ACT, 1845.

See Company. 4.

COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

To give further Powers to Companies with respect to certain Instruments, under which they may be constituted or regulated.

COMPANIES (WINDING-UP) ACT, 1890.

To amend the law relating to the Winding-up of Companies in England and Wales.

COMPANY.

1. ——

BRADFORD BANKING COMPANY *v.* BRIGGS & Co., **31 Ch. D. 19.** The Companies Act, 1862, s. 30, relieved the company from taking notice of any trust created in respect of its shares.—LORD ESHER, M.R.; BAGGALLAY, L.J.

2. —— **Bonus Dividend—Capital or Income.**

BOUCHE *v.* SPROULE, **12 App. Cas. 398.** Where a company has power to increase its capital and to appropriate its profits to such increase it cannot be considered as having intended to convert, or having converted, any part of its profits into capital when it has made no such increase, even if a company having no power to increase its capital may be regarded as having thus converted profits into capital by the accumulation and use of them as such. —LORD HERSCHELL.

3. —— **Capital partly paid up—Preference Shareholders—Winding-up—Surplus Assets—Distribution.**

BIRCH *v.* CROPPER. *In re* BRIDGEWATER NAVIGATION COMPANY, LIMITED, **14 App. Cas. 525.** In distributing the assets "amongst the members according to their rights and interests in the company" and in adjusting "the rights of the contributories amongst themselves" (under 25 & 26 Vict. c. 89, s. 133, sub-ss. 1, 10), the liability of the ordinary shareholders for the unpaid balance of their shares must not be disregarded; and after discharging all debts and liabilities and repaying to the ordinary and preference shareholders the capital paid on their shares, the assets ought to be divided among all the shareholders, not in proportion to the

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COMPANY—*continued.*

amounts paid on the shares, but in proportion to the shares held. —Lords Herschell, FitzGerald, and Macnaghten.

4. —— **Companies Clauses Act, 1845—Shares—Executors.**

Barton *v.* London and North Western Railway Company, **24 Q. B. D. 87.** This case shews the importance of not treating all companies as governed by the same law, when in truth they are governed by a variety of enactments. There are two great parallel lines of legislation with regard to companies; one being that of the Companies Act, 1862, the other that of the Companies Clauses Act, 1845. The provisions of these Acts are by no means alike; and it is always necessary in dealing with a company to look to the provisions of the particular Act by which it is governed. We have in this case to look to the provisions of the Companies Clauses Act, 1845; we have nothing to do with the Companies Act, 1862.

88. What then is an executor to do, who finds that his testator has died entitled to shares in such a company as this? He may do one of two things. He may leave the shares alone, outstanding in the name of the testator. The consequence would be that he could neither transfer the shares nor vote in respect of them, nor receive dividends on them, and, though he might be liable for calls, it would only be in his representative capacity. I do not see how the company could force him to have his name put on the register. On the other hand, the executor may want to deal with the shares or to receive dividends in respect of them. If so he must avail himself of the machinery given by the 18th section, and procure himself to be registered as a shareholder.—Lindley, L.J.

5. —— **Contract on behalf of intended Company—Evidence—Ratification—Part Performance.**

Howard *v.* Patent Ivory Manufacturing Company. *In re* Patent Ivory Manufacturing Company, **38 Ch. D. 162.** It is said that companies have no conscience, but the liquidator of a company might as well have a conscience, when acting in the character of an officer of this Court. This Court does not allow itself to act dishonestly, and a more thoroughly dishonest proceeding than that mentioned, I cannot well imagine.

163. It was contended on their part that companies are not bound by acts of part performance, but I cannot accede to this argument. The Court proceeds in such cases on the ground of fraud, and I cannot hold that acts which, if done by an individual,

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COMPANY—*continued.*

would amount to a fraud, ought not to be so considered if done by a company. There is authority for saying that in the eye of this Court it is a fraud to set up the absence of agreement when possession has been given upon the faith of it. (Turner, L.J.) That is a very distinct decision which, so far as I know, has never been departed from, that the rule of Equity that part performance will take a case out of the Statute of Frauds applies to an incorporated company, and that an incorporated company which comes within that doctrine of part performance is just as much bound by it as if it were an individual. In the same case there is a summary of another part of the law to which I have often had occasion to refer. Where possession has been given upon the faith of an agreement, it is I think the duty of the Court, as far as it is possible to do so, to ascertain the terms of the agreement and to give effect to it.

164. When you find a company in possession of the property of another person you are bound, if you can, to refer that possession not to tresspass but to contract, and as Turner, L.J., said in the words I have quoted, to find out, if you possibly can, what that contract is.

168. After the winding-up the liquidator took an assignment of all the rest of the property of which he could possibly get an assignment, in pursuance of the very same arrangement. Now he comes to the Court and asks the Court to say, that there never was a contract between the company and Mr. Jordan. He says, "True, I have taken from Mr. Jordan everything I could possibly get from him; the company took an assignment of the leasehold premises which they have held ever since; I have treated all these as assets of the company, and I now turn round and say that there never was such an agreement." Such a course of conduct would be, as I have characterized it during the argument, the most flagrant dishonesty. It is saying "you shall not be paid for the property at all." I should not hold that unless I were bound by authorities very much more stringent than those which have been cited. Nor do I think that any branch of the Court would hold anything of that kind.—KAY, J.

6. —— **Contract by Trustee for intended Company—Ratification.**

In re NORTHUMBERLAND AVENUE HOTEL COMPANY, **33 Ch. D. 21.**

There no doubt was an agreement between a man called Nunneley who was agent for Wallis, and a man named Doyle, who described

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COMPANY—*continued.*

himself as trustee for the company. But at that time the company was not incorporated, and therefore it is perfectly clear that the agreement was inoperative as against the company. It is also equally clear that the company, after it came into existence, could not ratify that contract, because the company was not in existence at the time the contract was made. No doubt the company, after it came into existence, might have entered into a new contract upon the same terms as the agreement of the 24th of July, 1882, and we are asked to infer such a contract from the conduct and transactions of the company after they came into existence. It seems to me impossible to infer such a contract, for it is clear to my mind that the company never intended to make any new contract, because they firmly believed that the contract of the 24th of July was in existence, and was a binding valid contract.—LOPES, L.J.

7. —— **Directors—Auditor—Secretary and Manager—Misfeasance—Liability.**

LEEDS ESTATE, BUILDING AND INVESTMENT COMPANY *v.* SHEPHERD, **36 Ch. D. 797.** The capital of a company formed under the Act of 1862, can be legally applied only for the purposes specified in the articles of association.

798. Directors are trustees or *quasi* trustees of the capital of the company, and are liable, as trustees, for any breach of duty as regards the application of it.

802. It was, in my opinion, the duty of the auditor, not to confine himself merely to the task of verifying the arithmetical accuracy of the balance-sheet, but to inquire into its substantial accuracy, and to ascertain that it contained the particulars specified in the articles of association (and consequently a proper income and expenditure account), and was properly drawn up, so as to contain a true and correct representation of the state of the company's affairs.

805. The directors have fallen short of that standard of care which, having regard to the Oxford Case, they ought to have applied to the affairs of the company in the following respects:—(1) They never required the statement and balance-sheets to be made out in the manner prescribed by the articles; (2) They failed properly to instruct the auditor, or, at all events, to require him to report on the accounts and balance-sheets in the mode prescribed by the articles; and (3) They were content throughout to act on the statements of Crabtree (the Secretary and Manager)

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COMPANY—*continued.*

without inquiry or verification of any kind other than the imperfect audit of the accounts by Locking. Those accounts and balance-sheets did not truly represent the state of the company's affairs; and that being so, I think that according to what is laid down in Rance's Case, the onus is laid upon them to shew that the dividends they paid were paid out of profits. This upon the evidence before me they fail to do.

807. The several defendants who were directors at the time when these dividends were respectively paid are in my judgment jointly and severally liable for the amounts improperly paid away in each year of their directorship, and must (as in the Oxford Case) be ordered to repay such amounts with interest at four per cent.

808. I have next to consider the liability of the Secretary and Manager (Crabtree). It was his duty to prepare balance-sheets such as were required by the articles, and exhibiting a true and correct view of the state of the company's affairs. He never prepared any accounts of income and expenditure at all; and the balance-sheets prepared by him did not and were not intended to represent truly the state of the company's affairs; and it further appears to me that the balance-sheets were prepared for the purpose of shewing that a dividend was payable, and on the face of them treated the dividends which were actually paid as properly payable. The payment of these dividends was the natural and immediate consequence of the breach of duty on Crabtree's part, and he is liable for damages to the amount so paid.

809. Locking, the Auditor, also appears to me to have been guilty of a breach of duty to the company . . . It was a breach of duty on Locking's part to certify as he did. The payment of the dividends, director's fees, and bonuses to the manager actually paid in those years appears to be the natural and immediate consequence of such breach of duty; and I hold Locking liable for damages to the amount of the moneys so paid.—STIRLING, J.

8. —— **Director, gift to—Damage, measure of.**

EDEN *v.* RIDSDALE'S RAILWAY LAMP AND LIGHTING COMPANY, **23 Q. B. D. 372.** The company has the option of claiming what is given or its highest value whilst held by the director.—LINDLEY, L.J.

9. —— **Directors—Misfeasance.**

In re OXFORD BENEFIT BUILDING AND INVESTMENT SOCIETY, **35**

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COMPANY—*continued.*

Ch. D. 509. Directors are *quasi* trustees of the capital of the company.

Directors who improperly pay dividends out of capital are liable to repay such dividends personally upon the company being wound up.

Such an act is a breach of trust, and the remedy is not barred by the Statute of Limitations.—KAY, J.

10. —— Executors—Personal liability.

DUFF'S EXECUTORS' CASE, **32 Ch. D. 309.** If once shares are put into the names of executors individually, although they have a right of indemnity against the estate, they are liable personally, with that right of indemnity, and they cannot say that their liability is to be only a liability to the extent of the assets of the testator.—COTTON, L.J.

310. No company can validly allot shares to persons who are not responsible to the extent of the whole of their property.—FRY, L.J.

11. —— Fraudulent Preference.

KENT'S CASE, **39 Ch. D. 269.** The company were at the time unable to pay their debts as they became due, the company was "commercially insolvent" . . . the whole transaction was either a sham, or a fraud, or a deceit; and independently of legislation I should decline to give the transaction the effect of payment.—FRY, L.J.

271. It appears to me it was a transaction carried out in contemplation of the winding-up, with the view of giving a particular creditor a preference over other creditors. I think, therefore, that that transaction amounted to a fraudulent preference.—LOPES, L.J.

12. —— Invalid allotment of Shares—Invalid meeting.

In re PORTUGUESE CONSOLIDATED COPPER MINES, LIMITED, **42 Ch. D. 161.** The allotment would not have been invalid merely because the directors had not previously acquired any qualification by the holding of shares.—NORTH, J.

167. It is necessary that all the directors should have had notice of the meeting of the 24th. If they had not, then the meeting of the 24th was no valid meeting, and being an invalid meeting could not adjourn itself to the 26th.—LORD ESHER, M.R.

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COMPANY—*continued.*

13. —— **Liquidator, costs of.**

In re A. W. HALL & Co., **37 Ch. D. 721.** I think that this is a case which has been properly brought into Court, and that there ought to be no order as to costs, except that the Liquidator will take his out of the assets of the company.—STIRLING, J.

14. —— **Mortgage Debenture.**

ROSS *v.* ARMY AND NAVY HOTEL COMPANY, **34 Ch. D. 49.** Where this Court is satisfied that it was intended to create a charge, and that the parties who intended to create it had the power to do so, it will give effect to the intention, notwithstanding any mistake which may have occurred in the attempt to effect it.—TURNER, L.J., KAY, J.

53. If the deed had not been executed at all there would have been in the debenture itself a contract to give such a security as was intended to be given by the deed.—COTTON, L.J.

15. —— **Preference Shares.**

In re BARROW HÆMATITE STEEL COMPANY, **39 Ch. D. 591.** Preference shares have no priority in the distribution of assets, unless such priority is expressly provided for.

16. —— **Profits applied to extension of works—Bonds given in payment of Interest—Ultra vires.**

WOOD *v.* ODESSA WATERWORKS COMPANY, **42 Ch. D. 636.** A waterworks company constituted under the Companies Acts, 1862, having applied the profits which had been earned to the construction of productive works instead of paying a dividend to the shareholders, passed a resolution proposing to give to the shareholders debenture bonds bearing interest and redeemable at par, by an annual drawing, extending over thirty years *held* illegal.

17. —— **Promoters—Respective liabilities of, for work done.**

In re SKEGNESS AND ST. LEONARD'S TRAMWAYS COMPANY. *Ex parte* HANLY, **41 Ch. D. 215.** Those persons only who do work directly for a company in process of formation, without being employed by any one else for hire or reward, are entitled to look to the company when formed, for payment of the costs and expenses of the work of which the company has got the benefit, and those persons who are employed by any one else to do the work for hire or reward must look to the person who employed them.

18. —— **Promoter—Secret Commission—Agent—Trustee.**

LYDNEY AND WIGPOOL IRON ORE COMPANY *v.* BIRD, **33 Ch. D. 94.** It is perfectly well settled that a promoter of a company is

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COMPANY—*continued.*

accountable to it for all moneys secretly obtained by him from it just as if the relationship of principal and agent or of trustee and *cestui que trust* had really existed between them and the company when the money was so obtained.—COTTON, LINDLEY, and LOPES, L.JJ.

19. —— **Prospectus—Fraud—Action of Deceit.**

GLASIER *v.* ROLLS, **42 Ch. D. 458.** The Court is to be governed by the old rules as to an action of deceit, so that to make the defendant liable two things are necessary, the statement must be false and must be made dishonestly . . . The burden of proof is on the plaintiff; he charges the defendant with fraud, and he must prove it; the burden does not lie on the defendant of proving that he made the statement honestly. Before going further I will say that unless fraud is very clearly to be inferred from the documents and the facts proved, we ought not to find the defendant guilty of fraud if the judge below has not done so. —COTTON, L.J.

20. —— **Resolution necessary to bind.**

See Compromise.

21. —— **Shares—Rectification of Register.**

In re RAILWAY TIME TABLES PUBLISHING COMPANY. *Ex parte* SANDYS, **42 Ch. D. 113.** As soon as she assented to being put on the register in respect of these shares, the law, independently of contract, threw upon her the liability of paying off the whole £5 which was the nominal amount of these shares . . . She is not entitled to be relieved from that assent and the implied contract arising therefrom, simply because she made a mistake as to the general law of this country.—COTTON, L.J.

22. —— **Transfer of Shares.**

THE QUEEN *v.* LAMBOURN VALLEY RAILWAY COMPANY, **22 Q. B. D. 466.** A transfer will be upheld, though made to a mere pauper for the avowed purpose of relieving the transferor from any future liability.—POLLOCK, B.

23. —— **Voluntary Liquidator—Provisional Liquidator—Carrying on Business for benefit of Winding-up.**

In re DRY DOCKS CORPORATION OF LONDON, **39 Ch. D. 309.** What is the object of appointing a provisional liquidator under a petition which asks for a winding-up? The object is to keep things in *statu quo* and to prevent anybody from getting priority.

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COMPANY—*continued.*

It has, no doubt, been held again and again that if a company during the winding-up retains possession of its premises, and rent or rates become due in respect of these premises while the company is in possession and is using them for the benefit of the creditors in the winding-up, any rent or rates which become due during that period ought to be paid in full, because, practically, the company in the winding-up is a tenant and is using the landlord's property, or incurring rates which are due in respect of that property, for the very purpose of benefiting the creditors who are winding-up. Now, is that the case where there is a provisional liquidator? I do not think it is so altogether. The provisional liquidator does not necessarily carry on the business for the purpose of winding-up. He cannot wind up; he cannot sell the property; he cannot get rid of it. He is only put in to prevent people from obtaining priority, and in no true sense can he be said to carry on the business of the company or to hold the property for the purposes of the winding-up.—KAY, J.

312. The appointment of a provisional liquidator was for the purpose of protecting the property with a view to the winding-up of the company. It was only by this appointment that these goods were protected, and, if a winding-up order had been made on the petition, these rates would have been paid as part of the expenses incurred for the purpose of winding up the company.—COTTON, L.J.

24. —— **Winding-up—Debenture-holders—Appointment of Receiver by—Official Liquidator.**

In re HENRY POUND, SON, AND HUTCHINS, **42 Ch. D. 411.** The official liquidator is an officer of the Court; he is practically in the position of a receiver appointed by the Court, and it would be a contempt of Court for any one to interfere in any way with his possession without the leave of the Court. Therefore, before these mortgagees can put their receiver into possession, they must obtain the leave of the Court . . . If these debenture-holders had brought their action, and in that action asked for the appointment of a receiver, after the Court had appointed an official liquidator, the Court would appoint the official liquidator their receiver, and would not appoint another receiver. That has been for a long time the settled practice of the Court. One ground for that is that the Court would not go to the expense of having two receivers at the same time, one for the ordinary creditors of the company—

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COMPANY—*continued.*

the official liquidator—and the other over his head for the mortgagees; and another reason is that, where an official liquidator has been appointed, it is his duty to guard the interests of the mortgagees just as much as those of any other class of creditors, and unless there were a conflict between the interests of the mortgagees and those of other creditors (and nothing of the kind is here suggested), there would be no reason in the world why an additional receiver to the liquidator should be appointed.—KAY, J.

25. —— Winding-up—Liquidator.

In re ADAM EYTON, LIMITED. *Ex parte* CHARLESWORTH, **36 Ch. D. 305.** A liquidator, when he is appointed, is not the less appointed because he has not, at the time the appeal comes on, perfected his right to act by giving security.—BOWEN, L.J.

26. —— Winding-up—Salary of Managing Director—Solicitor.

In re DALE AND PLANT, LIMITED, **43 Ch. D. 258.** Suppose this case was that of a solicitor, as a man specially trained in a peculiar business which is of great importance to the community, and that such solicitor happened to be a member of a company, and sent in his bill of costs for business done for the company. In the winding-up of the company could it be said that the solicitor should not prove in competition with the other creditors because he was a shareholder? Obviously that proposition could not be maintained for a moment.—KAY, J.

COMPENSATION.

See Election. 1.
Land Clauses Consolidation Act, 1845. 3.
Land Clauses Consolidation Act, 1845. 4.
Railway Company. 6.

COMPROMISE—Consideration—Company.

MILES *v.* NEW ZEALAND ALFORD ESTATE COMPANY, **32 Ch. D. 284.** If we are to infer that the plaintiff believed that some money was due to him, his claim was honest, and the compromise of that claim would be binding and would form a good consideration, although the plaintiff, if he had prosecuted his original claim, would have been defeated.—LORD BLACKBURN; COTTON, L.J.

286. To bind the Company there ought to be something done by way of a resolution.—COTTON, L.J.

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CONDITIONS OF SALE.

See Vendor and Purchaser. 3.
Vendor and Purchaser. 6.

CONFIDENTIAL INFORMATION.

See Master and Servant. 1.

CONFLICT OF LAWS.

1. ——

LEE *v.* ABDY, **17 Q. B. D. 312.** The validity and incidents of a contract must be determined by the law of the place where it is entered into.—DAY, J.

2. —— **Lex Loci contractûs—Intention of Parties.**

In re MISSOURI STEAMSHIP COMPANY, **42 Ch. D. 321.** When a contract is made in one country to be performed wholly or partially in another, *primâ facie* the contract is to be construed and enforced according to the *lex loci contractûs*. But the Court will look at all the circumstances, to ascertain by the law of which country the parties intended the contract to be governed, and will enforce the contract accordingly, unless it should contain stipulations contrary to morality or expressly forbidden by positive law.—LORD HALSBURY, L.C.; COTTON and FRY, L.JJ.

CONFUSION OF BOUNDARIES.

See Rent Charge.

CONSIDERATION

See Compromise.

CONSOLIDATION.

See Mortgage. 3.

CONSPIRACY.

1. —— **Combination.**

MOGUL STEAMSHIP COMPANY *v.* MCGREGOR, GOW AND COMPANY, **21 Q. B. D. 550.** If the object were unlawful, or if the object were lawful but the means employed to effect it were unlawful, and if there were a combination either to effect the unlawful object or to use the unlawful means, then the combination was unlawful, then those who formed it were misdemeanants, and a person injured by their misdemeanour has an action in respect of his injury.

552. The acts done by the defendants here, if done wrongfully and maliciously, or if done in furtherance of a wrongful and malicious combination, would be ground for an action on the case at the suit of one who suffered injury from them.

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CONSPIRACY—*continued.*

553. It is said that the motive of these acts was to ruin the plaintiffs, and that such a motive, it has been held, will render the combination itself wrongful and malicious, and that if damage has resulted to the plaintiffs an action will lie. I concede that if the premises are established the conclusion follows.—LORD COLERIDGE, C.J.

2. —— Combination.

MOGUL STEAMSHIP COMPANY *v.* MACGREGOR, GOW AND COMPANY, **23 Q. B. D. 613.** Intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse. Such intentional action when done without just cause or excuse is what the law calls a malicious wrong.—BOWEN, L.J.

614. What, then, are the limitations which the law imposes on a trader in the conduct of his business as between himself and other traders? There seem to be no burdens or restrictions in law upon a trader which arise merely from the fact that he is a trader, and which are not equally laid on all other subjects of the Crown. His right to trade freely is a right which the law recognises and encourages, but it is one which places him at no special disadvantage as compared with others. No man, whether trader or not, can, however, justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction, and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it. The intentional driving away of customers by show of violence; the obstruction of actors on the stage by preconcerted hissing; the disturbance of wild fowl in decoys by the firing of guns; the impeding or threatening servants or workmen; the inducing persons under personal contracts to break their contracts: all are instances of such forbidden acts.—BOWEN, L.J.

618. Assume that what is done is intentional, and that it is calculated to do harm to others. Then comes the question, Was it done with or without "just cause or excuse"? If it was *bonâ fide* done in the use of a man's own property, in the exercise of a man's own trade, such legal justification would, I think, exist not the less because what was done might seem to others to be selfish or unreasonable. . . . But such legal justification would not exist

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CONSPIRACY—*continued.*

when the act was merely done with the intention of causing temporal harm, without reference to one's own lawful gain, or the lawful enjoyment of one's own rights.—BOWEN, L.J.

620. Competition however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities as I have above referred to, gives rise to no cause of action at common law.—BOWEN, L.J.

624. "The crime of conspiracy," said Tindal, C.J.—speaking for the judges attending the House of Lords in O'Connell's Case—"is complete if two, or more than two, should agree to do an illegal thing; that is, to effect something in itself unlawful, or to effect by unlawful means, something which in itself may be indifferent or even lawful." "A conspiracy," said Willes, J., "consists in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means." In all cases, therefore, a conspiracy is an agreement to do an unlawful act.—FRY, L.J.

628. The combination, if in restraint of trade, is *primâ facie*, void only and not illegal; no statute in force makes such competition criminal; and the policy of our law, as at present declared by the Legislature, is against all fetters on combination and competition unaccompanied by violence or fraud, or other like injurious acts.—FRY, L.J.

CONSTRUCTION—ACT OF PARLIAMENT.

1. —

NORTHCOTE *v.* OWNERS OF THE HENRICH BJÖRN. THE HENRICH BJÖRN, **11 App. Cas. 281.** Where the Legislature in its laws, or parties in their agreements, might have expressly stated a particular intention and have not, that intention ought not to be implied, and the law or agreement dealt with as if the intention were expressed, without the most cogent considerations amounting almost to a necessity.—LORD BRAMWELL.

2. —

SALMON *v.* DUNCOMBE, **11 App. Cas. 634.** It is a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law.—LORD HOBHOUSE.

3. —

NETHERSEAL COLLIERY COMPANY *v.* BOURNE, **14 App. Cas. 242.** It seems to me that if your Lordships were to sustain this con-

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CONSTRUCTION—*continued.*

struction the proceedings of the statute would be rendered nugatory.—LORD HERSCHELL.

4. —

RAILTON *v.* WOOD, **15 App. Cas. 367.** Where there are two constructions, the one of which will do, as it seems to me, great and unnecessary injustice, and the other of which will avoid that injustice and will keep exactly within the purpose for which the statute was passed, it is the bounden duty of the Court to adopt the second and not to adopt the first of those constructions.—LORD CAIRNS, LORD FIELD.

5. —

COX *v.* HAKES, **15 App. Cas. 518.** "From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter they have adjudged to reach to some persons only, which expositions have always been founded on the intent of the Legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter and according to that which is consonant to reason and good discretion."—LORD HALSBURY, L.C.

540. "*Quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest.*" Whenever anything is authorized to be done by law and it is impossible to do that thing unless something else not authorized by express terms be also done, then that something else will be supplied by necessary intendment.—LORD MORRIS.

542. The admitted rules of construction, from which I am not at liberty to depart, lay down that I cannot infer an intention contrary to the literal meaning of the words of a statute, unless the context, or the consequences which would ensue from a literal interpretation, justify the inference that the legislature has not expressed something which it intended to express, or unless such

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CONSTRUCTION—*continued.*

interpretation leads to any manifest "absurdity or repugnance," with this superadded qualification that the absurdity or repugnance must be such as manifested itself to the mind of the law-maker, and not such as may appear to be so to me.—LORD FIELD.

6. —

MELLISS *v.* SHIRLEY LOCAL BOARD, **16 Q. B. D. 451.** Although a statute contains no express words making void a contract which it prohibits, yet when it inflicts a penalty you must consider whether the penalty is imposed with intent merely to deter persons from entering into the contract, or for the purposes of revenue, or whether it is intended that the contract shall not be entered into so as to be valid at law.—LORD ESHER, M.R.

7. —

LIGHTBOUND *v.* HIGHER BEBINGTON LOCAL BOARD, **16 Q. B. D. 584.** There is a broad rule of construction: in construing the words (of an Act of Parliament) you must look at the subject-matter of the section and see what is its scope and object.—BOWEN, L.J.

8. —

Ex parte FOX. *In re* SMITH, **17 Q. B. D. 10.** This is doing some violence to the language of the Act, but it seems to me that it is most in accordance with the spirit of it.—CAVE, J.

9. —

In re MACKENZIE, **17 Q. B. D. 116.** By the true rule of construction of Acts of Parliament we must give the words used in them their plain meaning unless the context would render such construction manifestly absurd.—GROVE, J.

117. I do not think we can make small amendments of Acts of Parliament by construing them against their natural sense.—STEPHEN, J.

10. —

LEA *v.* FACEY, **17 Q. B. D. 146.** It is impossible to deal with the questions raised in this case without getting more or less into subtleties whichever way it is looked at.—WILLS, J.

11. —

Ex parte BLANCHETT. *In re* KEELING, **17 Q. B. D. 307.** When it is suggested that a liberal interpretation should be given to the words of a statute, the Court ought to consider what is the class of statute in which the words are found. A liberal interpretation

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CONSTRUCTION—*continued.*

ought not rightly to be given to any clause of a statute which entails penal consequences on any person.—BOWEN, L.J.

12. —

LOUGHBOROUGH HIGHWAY BOARD *v.* CURZON, **17 Q. B. D. 349.** Section 18 has not, nor has any part of it, been in terms repealed, and, according to the recognised rule of construction, it cannot be held to have been repealed by implication, unless the steps which are to be taken under the Act of 1878 are wholly inconsistent with the provisions of section 18.—LORD ESHER, M.R.

351. When the legislature gives a new remedy for an existing right, the old remedy is not taken away, unless the legislature have expressly said so, or unless the new remedy is inconsistent with the old one.—FRY, L.J.

13. —

COLQUHOUN *v.* BROOKS, **21 Q. B. D. 65.** The maxim "*Expressio unius, exclusio alterius,*" has been pressed upon us. I agree with what is said in the Court below by Wills, J., about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The *exclusio* is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice.—LOPES, L.J.

14. —

THE QUEEN *v.* COMMISSIONERS OF INCOME TAX, **22 Q. B. D. 309.** Words of a statute are to be taken in their primary, and not in their secondary signification. If therefore the words are popular ones they should be taken in a popular sense, if words of art they should be *primâ facie* taken in their technical sense.—FRY, L.J.

15. —

THE QUEEN *v.* BISHOP OF LONDON, **23 Q. B. D. 429.** In construing an Act of Parliament the intention of the legislature is the point to be ascertained, and it must be collected from the whole of the provisions in the statute which bear upon the question. A thing which is within the letter of a statute is not within the statute unless it be within the intent of the legislature.—MANISTY, J.

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CONSTRUCTION—*continued.*

16. ——

In re BROCKELBANK. *Ex parte* DUNN AND RAEBURN, **23 Q. B. D. 463.** The Court has over and over again acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust, and would revolt the mind of any reasonable man, unless they have manifested that intention by express words.—LORD ESHER, M.R.

17. —— **Act of Parliament and Rules.**

SIBUN *v.* PEARCE, **44 Ch. D. 370.** The question turns really upon the true construction of this rule taken in connection with the Act of Parliament. You may construe a rule by reference to the Act or Parliament, but you can hardly construe an Act of Parliament by reference to a rule; and if rule 18 does conflict with the Act of Parliament, so much the worse for the rule, not so much the worse for the Act of Parliament.—LINDLEY, L.J.

See Comity of Nations.

Statutes, Constructions of.

CONSTRUCTION—CONTRACT.

See Contract. 1.

CONSTRUCTION—DEED.

1. ——

In re DE ROS' TRUST. HARDWICKE *v.* WILMOT, **31 Ch. D. 88.** It is very plain law that if you can find that which amounts to an agreement within the four corners of a deed, it is as binding as a covenant expressed in the most apt possible words.—KAY, J.

2. —— **Inconsistency between Recitals and Operative Part.**

Ex parte DAWES. *In re* MOON, **17 Q. B. D. 286.** There are three rules. If the recitals are clear, and the operative part is ambiguous, the recitals govern the construction. If the recitals are ambiguous, and the operative part is clear, the operative part must prevail. If both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part is to be preferred.

288. The recitals are perfectly clear and unambiguous; the operative part is ambiguous. Therefore, the recitals must prevail. —LORD ESHER, M.R.

3. —— **General Words.**

THAMES AND MERSEY MARINE INSURANCE CO. *v.* HAMILTON, FRASER & CO., **12 App. Cas. 490.** Words, however general, may be limited with respect to the subject-matter in relation to which

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CONSTRUCTION—DEED—*continued.*

they are used. . . . General words may be restricted to the same genus as the specific words that precede them.—LORD HALSBURY, L.C.

CONSTRUCTION—WILL.

See Will. 3.
Will. 4.
Will. 6.

CONTEMPT OF COURT.

1. —— Newspaper—Fine.

In re CROWN BANK. *In re* O'MALLEY, **44 Ch. D. 651.** When, with notice that the petition had been presented, the newspaper deliberately took one side of the controversy, and took on itself to foretell what the result would be; in my opinion there was a gross contempt of Court. . . . Nothing is more incumbent upon Courts of Justice than to preserve their proceedings from being misrepresented, nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned, as parties in causes before the cause is finally heard. It has always been my opinion, as well as the opinion of those who have sat here before me, that such a proceeding ought to be discountenanced.—NORTH, J.

2. —— Punishment.

In re MARIA ANNIE DAVIES, **21 Q. B. D. 239.** Under the Debtors Act of 1869, the power to imprison for disobeying the order of the Court, even in the case of grave delinquency on the part of the trustee, is restricted to a period of twelve months.

Under the County Courts Act (9 & 10 Vict. c. 95, s. 113), imprisonment for contempt must be for a definite period only, not exceeding seven days.—MATHEW, J.

See Appeal. 4.

CONTINGENT TITLE—"Spes successionis"—"Nemo est hæres viventis."

In re PARSONS, STOCKLEY *v.* PARSONS, **45 Ch. D. 55.** It is indisputable law that no one can have any estate or interest, at law or in equity, contingent or other, in the property of a living person to which he hopes to succeed as heir-at-law, or next-of-kin, of such living person. During the life of such person, no one can have more than a "*spes successionis*," an expectation or hope of succeeding to his property.

The law is the same where there is a limitation by will or settle-

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CONTINGENT TITLE—*continued.*

ment of real or personal property to the heir, or statutory next-of-kin of a living person. During his life no one can say "I have a contingent estate or interest as possible heir or next of kin," just as in the first case no one can have more than an expectation or hope of being heir or next-of-kin.

57. The statute, 8 & 9 Vict. c. 106, s. 6, made a possibility coupled with an interest assignable at law, but not a mere possibility.

63. "*Nemo est hæres viventis*" should be construed literally. There is no such character in law as the heir of the living person, or as his statutory next-of-kin. There is a wide difference, for this reason, between a gift to such of the "children" or "nephews," or even "kindred" of A. who shall be living at his death, and a gift to those who shall then be his statutory next-of-kin. During A.'s life, there may be children, nephews, or kindred. Each of them has probably sufficient interest, though contingent, to take proceedings to protect the fund: see *per* Lord Hatherley in *Joel* v. *Wills*. Some, or all of them, might be made defendants in an action to administer the trusts. Neither of these things can be done where the gift is to statutory next-of-kin. They have no existence whatever in law, while the "*propositus*" is living. No one can, as possible next-of-kin, even bring an action to perpetuate testimony as to his kinship during that period.—KAY, J.

CONTRACT.

1. —— **Construction.**

TANCRED ARROL & CO. *v.* STEEL COMPANY OF SCOTLAND, **15 App. Cas. 136.** The next point insisted upon is, that we can cut down and override this contract, and the language in which it is conceived by some sort of custom . . . I think the principle is the same in both countries. You may translate the words of a contract; you cannot vary or alter it.—LORD HALSBURY, L.C.

2. —— **Joint—Res Judicata.**

CAMBEFORT *v.* CHAPMAN, **19 Q. B. D. 232.** The principle of the maxim "*nemo debet bis vexari*" applies not only to the case of one individual being sued twice for the same cause of action, but also to the case of a person suing twice on the same contract.—FIELD, J.

233. A judgment recovered against one of several joint makers or joint acceptors, though without satisfaction, is a good defence to an action against the others.—BYLES, J., MANISTY, J.

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CONTRACT—*continued.*

3. —— Joint and Several.

In re PARKER. *Ex parte* SHEPPARD, **19 Q. B. D. 87.** Trustees are held to undertake jointly and severally for the performance of their duties.—BRAMWELL, L.J., CAVE, J.

4. —— Misrepresentation.

NEWBIGGING *v.* ADAM, **34 Ch. D. 593.** According to the decisions of Courts of Equity, it was not necessary in order to set aside a contract obtained by material false representation, to prove that the party who obtained it knew at the time when the representation was made that it was false. It was put in two ways, either of which was sufficient. One way of putting the case was, "A man is not to be allowed to get a benefit from a statement which he now admits to be false. He is not to be allowed to say, for the purpose of civil jurisdiction, that when he made it he did not know it to be false; he ought to have found that out before he made it." The other way of putting it was this, "Even assuming that moral fraud must be shewn in order to set aside a contract, you have it where a man, having obtained a beneficial contract by a statement which he now knows to be false, insists upon keeping that contract. To do so is a moral delinquency; no man ought to seek to take advantage of his own false statements."—BOWEN, L.J.

5. —— Estoppel.

BIRMINGHAM AND DISTRICT LAND COMPANY *v.* LONDON AND NORTH WESTERN RAILWAY COMPANY, **40 Ch. D. 281.** If parties who have entered into definite and distinct terms involving certain legal results, afterwards by their own act, or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable.—LINDLEY, L.J.

286. If persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a Court of Equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before.—BOWEN, L.J.

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CONTRACT—*continued.*

6. —— Fraud.

THE QUEEN *v.* CLARENCE, **22 Q. B. D. 27.** In respect of a contract, fraud does not destroy the consent. It only makes it revocable. —WILLS, J.

7. —— Threats of Criminal Proceedings—What held to be evidence of.

LOUND *v.* GRIMWADE, **39 Ch. D. 605.**

See Company. 5.
Conflict of Laws. 1.
Conflict of Laws. 2.
Principal and Agent. 3.
Repudiation of a Contract.

CONTRACT BY CROWN.

See Petition of Right.

CONTRACT BY LETTERS.

See Vendor and Purchaser. 8.
Vendor and Purchaser. 9.

CONTRIBUTION.

THE "BERNINA," **12 P. D. 90.** There is no contribution among wrong-doers.—LINDLEY, L.J.

CONTRIBUTORY NEGLIGENCE.

See Master and Servant. 6.
Negligence. 1.

CONVENT.

See Undue Influence.

COPYHOLD ACT, 1887.

COPYHOLDS.

1. —— Confusion of boundaries.

SEARLE *v.* COOKE, **43 Ch. D. 530.** It is the duty of a copyhold tenant to preserve the boundaries of his tenement, and if he does not do so, both he and all claiming under him are answerable.—COTTON, L.J.

531. In the present case there was an enfranchisement in 1880, and the copyhold tenure then came to an end, but it was put an end to subject to these rent-charges. What was the effect of this enfranchisement? It was agreed that it put an end to all duty on the tenant to preserve the boundaries.—COTTON, L.J.

534. When the enfranchisement was completed, the relation between the lord and the tenant was severed, and if the boundaries

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COPYHOLDS—*continued.*

had become confused afterwards, I do not think the old obligation would have remained, but the lord would have lost his right.—LINDLEY, L.J.

535. So far as the future is concerned, no doubt the tenant is free from all the obligations and incidents of copyhold tenure, but as to the past, the enfranchisements did not destroy any rights which had then accrued to the lord.—LOPES, L.J.

2. —— Fines.

HALL *v.* BROMLEY, **35 Ch. D. 655.** As a general rule, there is no fine payable except in the case of admittance. There are, of course, exceptions to that general rule, but it is not necessary to refer to them in reference to this case. Admittance, and the right to admittance, depend upon the legal estate, and the lord can look at that only, and has nothing to do with any equitable devolution of title.—LINDLEY, L.J.

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1. —— Author.

KENRICK & Co. *v.* LAWRENCE & Co., **25 Q. B. D. 106.** Mr. Jefferson is registered as the author of the drawing. It seems to me he was not the author. . . . It may possibly be that Mr. Jefferson and Mr. Bott were joint "authors" of the drawing; but I cannot understand how the man who did all that was done in the way of drawing can be excluded from all participation in the authorship of the thing drawn by him.—WILLS, J.

2. —— Infringement—Dramatization of Novel.

WARNE & Co. *v.* SEEBOHM, **39 Ch. D. 81.** So long, therefore, as he does not print or otherwise multiply copies of the novel, any person may dramatize it, and may cause his drama to be publicly represented. But if, for the purpose of dramatization, he prints or otherwise multiplies copies of the book, he violates the rights of the author no less than if the copies were made for gratuitous distribution.—STIRLING, J.

3. —— Implied Contract—Breach of Faith.

POLLARD *v.* PHOTOGRAPHIC COMPANY, **40 Ch. D. 349.** Where a person obtains information in the course of a confidential employment, the law does not permit him to make any improper use of the information so obtained, and an injunction is granted, if necessary, to restrain such use; as, for instance, to restrain a clerk from disclosing his master's accounts, or an attorney from

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COPYRIGHT—*continued.*

making known his client's affairs learned in the course of such employment. Again, the law is clear that a breach of contract, whether express or implied, can be restrained by injunction.

352. Again, it is well known that a student may not publish a lecture to which he has been admitted, even though by his own skill he has taken a copy of it in shorthand, and the receiver of a letter may not publish it without the writer's consent, though the property in the paper and writing is in him, and many similar instances might be given.—NORTH, J.

4. —— Lectures in Class-room by Professor.

CAIRD *v.* SIME, **12 App. Cas. 338.** Where a person speaks a speech to which all the world is invited, either expressly or impliedly, to listen, or preaches a sermon in a church, the doors of which are thrown open to all mankind, the mode and manner of publication negative, as it appears to me, any limitation.—LORD HALSBURY, L.C.

345. I do not think it can be disputed that, as stated by Lord Shand, this is the first occasion in the history of the Scottish universities on which any such right as that now claimed has been asserted. If the claim be well founded, there can be no copyright in a lecture which has been once delivered in the class-room.—LORD WATSON.

5. —— Newspaper—Libel and Registration Act, 1881.

CATE *v.* DEVON AND EXETER CONSTITUTIONAL NEWSPAPER COMPANY, **40 Ch. D. 503.** There is copyright in a newspaper as a sheet of letter-press.

504. There is no section in this Act providing that until a newspaper has been registered there shall be no right of action in respect of it. In the Copyright Act that provision is clear and precise.

506. Registration is only necessary as a condition precedent to suing. The almost universal practice on the part of large publishers notoriously is that they do not register until just on the eve of taking some proceeding.—NORTH, J.

6. —— Works of Art.

KENRICK & Co. *v.* LAWRENCE & Co., **25 Q. B. D. 103.** As for the manner of treating the subject, there can be no copyright in that; for if the thing to be represented be represented at all, it is impossible to treat it in any other way. It seems to me, therefore, that although every drawing of whatever kind may be entitled to

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COPYRIGHT—*continued.*

registration, the degree and kind of protection given must vary greatly with the character of the drawing, and that with such a drawing as we are dealing with, the copyright must be confined to that which is special to the individual drawing over and above the idea; in other words, the copyright is of the extremely limited character which I have endeavoured to describe. A square can only be drawn as a square, a cross can only be drawn as a cross, and for such purposes as the plaintiffs' drawing was intended to fulfil, there are scarcely more ways than one of drawing a pencil or the hand that holds it. If the particular arrangement of square, cross, hand or pencil be relied upon, it is nothing more than a claim of copyright for the subject, which, in my opinion, cannot possibly be supported.—WILLS, J.

CORONERS ACT, 1887.

CORPORATION.

See Malicious Prosecution.
Service of Writ. 1.

CORRUPT PRACTICE.

See Criminal Law. 3.

COSTS.

1. ——

In re BOMBAY CIVIL FUND ACT, 1882. PRINGLE *v.* SECRETARY OF STATE FOR INDIA, **40 Ch. D. 289.** A Court which is put in motion wrongly has inherent jurisdiction to compel the person who puts it in motion wrongly, and who brings an innocent party to answer an unfounded claim or an unjustifiable proceeding, to pay the costs.—BOWEN, L.J.

2. —— **Separate Defences.**

BOSWELL *v.* COAKS, **36 Ch. D. 447.** According to the ordinary rule of the Court these six defendants are entitled to have separate costs of defending. To that rule there is an exception; in the case of co-trustees not acting together, but severing in their defences, a practice exists of not allowing separate sets of costs unless the Court gives a direction that that should be done. . . . Every defendant had a right to appear by a separate solicitor, but what the Court said was that if the defendants were co-trustees, or appeared by the same solicitor, they should not necessarily have the costs of a separate appearance.—NORTH, J.

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COSTS—*continued.*

3. —— In County Court.

In re DOD, LONGSTAFFE, & Co. *Ex parte* LAMOND, **21 Q. B. D. 244.** The new Rules of 1886 were, I think, intended to prevent solicitors in cases of small claims recovering from their clients any more than the very small costs allowed by the scale.—WILLS, J.

4. —— Action on Untaxed Bill—Form of Order.

LUMLEY *v.* BROOKS, **41 Ch. D. 323.**

5. —— Appeal—Stay of Proceedings.

ATTORNEY-GENERAL *v.* EMERSON, **24 Q. B. D. 56.** The Court has a discretion as to refusing a stay of proceedings, unless the respondent's solicitor gives an undertaking to repay the costs paid by the appellant in the event of the appeal being successful.—LORD ESHER, M.R., LINDLEY and LOPES, L.JJ.

6. —— Costs of Counter-claim.

AMON *v.* BOBBETT, **22 Q. B. D. 543.**

7. —— Depriving party of, for "good cause."

HUXLEY *v.* WEST LONDON EXTENSION RAILWAY COMPANY, **14 App. Cas. 32.** Everything which increases the litigation and the costs, and which places upon a party a burden which he ought not to bear in the course of that litigation, is perfectly good cause for depriving the other party of his costs.—LORD HALSBURY, L.C.

33. These words "for good cause" at all events embrace, in my opinion, everything for which the party is responsible, connected with the institution or conduct of the suit, and calculated to occasion unnecessary litigation and expense.—LORD WATSON.

8. —— Disbursements.

In re LAMB, **'23 Q. B. D. 6.** What are "disbursements" which are properly included in a solicitor's bill: they are payments made by him, not as agent, but when acting in his character of solicitor: *e.g.*, Court fees, counsel's fees, stamps on conveyances, probate duty, &c.—POLLOCK, B., and MANISTY, J.

9. —— Discretion of Judge—Exceptions.

CHARLES *v.* JONES, **33 Ch. D. 83.**

10. —— Evidence procured before Trial.

WINDHAM *v.* BAINTON, **21 Q. B. D. 201.** If the costs and expenses of procuring evidence were properly and reasonably incurred, I think it makes no difference that they were incurred before notice of trial.—MANISTY, J.

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COSTS—*continued.*

11. —— **Joint Defendants severing Pleadings.**

STUMM *v.* DIXON, **22 Q. B. D. 533.** In my opinion the true rule is this: When an action is tried against two or more defendants, and any defendant separates in his defence, and the judgment is against all, the law is that each of them is liable for the damages awarded by the judgment, and each of them is liable to the plaintiff for all costs taxed on his behalf as properly incurred by him in the maintenance of his action, except as to costs caused to him by so much of the separate defence of any defendant as is, and can only be, a defence for that defendant as distinguished from other defendants. With regard to such costs so caused to the plaintiff, he is entitled by law to recover them against that defendant alone who has so caused him to incur them.—LORD ESHER, M.R.

12. —— **Of Mortgage.**

See Mortgagor and Mortgagee. 4.

13. —— **Security for—Insolvent Plaintiff—Poverty.**

COWELL *v.* TAYLOR, **31 Ch. D. 38.** The general rule is that poverty is no bar to a litigant; that, from time immemorial, has been the rule at Common Law, and also, I believe, in Equity. There is an exception in the case of appeals, but there the appellant has had the benefit of a decision by one of Her Majesty's Courts, and so an insolvent party is not excluded from the Courts, but only prevented, if he cannot find security, from dragging his opponent from one Court to another. There is also an exception introduced in order to prevent abuse, that if an insolvent sues as nominal plaintiff for the benefit of somebody else, he must give security. In that case the nominal plaintiff is a mere shadow. The two most familiar classes of cases of this kind are cases where a person has divested himself of his interest and handed it over to some one else that the transferee may sue for him, and cases where a person who has commenced a suit divests himself of his interest during the course of the suit in order that another person may carry it on for his benefit.—BOWEN, L.J.

14. —— **Solicitors' Remuneration Act, 1881.**

PARKER *v.* BLENKHORN. NEWBOULD *v.* BAILWARD, **14 App. Cas. 7.** Remuneration is to be allowed for work to which the scale does not apply.—LORD HALSBURY, L.C.

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COSTS—*continued.*

15. —— **Solicitors' Remuneration Act, 1881—Business connected with Lease—Abortive Negotiations.**

In re MARTIN (A LUNATIC), **41 Ch. D. 381.** The solicitor is entitled to remuneration for an abortive negotiation under rule 2 (*c*) of General Order, in addition to scale charge in respect of a lease subsequently completed by him.

386. I think it would be wrong, if there was a negotiation entirely at an end before the fresh negotiation had begun with the person to whom the lease was granted, that there should be no claim for the business done in respect of the completed negotiation which led to no lease, and therefore which did not come in any way within the schedule to which I have referred. . . . If we extended those cases to these negotiations the solicitor would get no payment at all for the trouble and business he had undertaken between the parties.—COTTON, L.J.

16. —— **Taxation—Claim and Counter-claim—Common Items.**

SHRAPNEL *v.* LAING, **20 Q. B. D. 338.** The claim is a cause of action by itself; the counter-claim is another and independent cause of action to be treated as if the claim did not exist. . . . The costs of the claim are to be taxed as though the claim were an action by itself. . . . The costs of the action belong to the plaintiff, but they are to be diminished by the costs of those issues on which he has failed. . . . The costs of the counter-claim must be taxed as though it were a wholly independent action. The costs of that action should be given to the defendant, subject to his losing the costs of those issues of the counter-claim on which he has failed. The taxing master will then have two sums, and his allocatur should be made for the balance. . . . Although the claim and counter-claim are to be treated as independent actions, the means of arriving at a conclusion on each may be common to both. . . . One brief is treated by the taxing-master as two, so much of it as relates to the claim and its issues will belong to the claim, so much as relates to the counter-claim and its issues will belong to the counter-claim. In the same way one fee on the brief will be treated as two fees. . . . The meaning of the expression "common items" is, items in respect of which both parties get the advantage. There must be very few of such items; it may be doubted whether there are more than two. Perhaps the cost of the writ ought so to be divided. . . . It is suggested, too, that the same principle may apply to a summons for interrogatories.—LORD ESHER, M.R.

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COSTS—*continued.*

17. —— **Taxation—Bill delivered more than twelve months.**

In re PARK. COLE *v.* PARK, **41 Ch. D. 326.** As no special circumstances alleged, taxation could not be ordered, but specific items may be inquired into.

See Land Clauses Consolidation Act, 1845. 2.
Separate Actions.
Solicitor. 5.

COTTAGE GARDENS.

See Allotments and Cottage Gardens Compensation for Crops Act, 1887.

COUNCILS.

See Ecclesiastical Law. 4.

COUNSEL.

1. —— **Authority of.**

MATTHEWS *v.* MUNSTER, **20 Q. B. D. 143.** Until counsel's authority is withdrawn, he has, with regard to all matters that properly relate to the case, unlimited power to do that which is best for his client.—LORD ESHER, M.R.

2. —— **Authority to Compromise.**

LEWIS *v.* LEWIS (**45 Ch. D. 281**), MATTHEWS *v.* MUNSTER (**20 Q. B. D. 141**), distinguished.

COUNTER-CLAIM.

See Costs. 6.

COUNTY COUNCIL.

See Highway. 2.
Local Government Act, 1888.

COUNTY COUNCILS—Their Constitution and Powers.

See Local Government Act, 1888.

COUNTY COURT.

1. ——

CURTIS *v.* STOVIN, **22 Q. B. D. 519.** Action for sum between £50 and £100 must be commenced in High Court.—LORD ESHER, M.R.

2. ——

LUMB *v.* TEAL & Co., **22 Q. B. D. 680.** Judges' notes must be produced on appeal, or explanation of non-production given.

COUNTY COURTS ACT, 1888.

To consolidate and amend the County Courts Acts.

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COUNTY ELECTORS ACT, 1888.

To provide for the Qualification and Registration of Electors for the purposes of Local Government in England and Wales.

COUNTY VOTE.

See Parliament.

COVENANT RUNNING WITH LAND.

See Public-house.

COVENANTS IN LAW.

See Implied Warranties.

CREDITOR'S DEED—Resulting Trust.

COOKE *v.* SMITH, **45 Ch. D. 46.** There is no trust of the surplus expressed in the deed, but when property belongs to people who are indebted, and they assign it for the purpose of paying their creditors, if those creditors are paid, then, in my opinion, there is a resulting trust.—COTTON, L.J.

49. We find no recital indicating an intention to sell the business; we find no recital indicating any intention to give up all interest in the business to the creditors by way of accord and satisfaction of their debts; but we find an assignment in the usual terms.—BOWEN, L.J. [Reversed [1891] A. C. 297.]

CRIMINAL LAW.

1. ——

THE QUEEN *v.* CLARENCE, **22 Q. B. D. 32.** A new field of extortion may be developed, and very possibly a fresh illustration afforded of the futility of trying to teach morals by the application of the criminal law to cases occupying the doubtful ground between immorality and crime, and of the dangers which always beset such attempts.—WILLS, J.

2. —— **Blow aimed at one Person accidentally wounding another.**

THE QUEEN *v.* LATIMER, **17 Q. B. D. 361.** We are of opinion that this conviction must be sustained. It is common knowledge that a man who has an unlawful and malicious intent against another, and, in attempting to carry it out, injures a third person, is guilty of what the law deems malice against the person injured, because the offender is doing on unlawful act, and has that which the judges call general malice, and that is enough.—LORD COLERIDGE, C.J.

3. —— **Description of Offence.**

THE QUEEN *v.* STROULGER, **17 Q. B. D. 330.** The indictment is bad on the ground that no offence is therein stated with anything

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CRIMINAL LAW—*continued.*

like reasonable certainty. There is no such specific offence known to the law as a corrupt practice.—DAY, J.

331. The real objection is on the ground of multifariousness.—MATHEW, J.

331. After verdict the imperfect statement of the offence in the indictment is cured, and the conviction is good.—MATHEW, J.

4. —— **False Pretences.**

THE QUEEN *v.* GORDON, **23 Q. B. D. 360.** I am very sensible that in such an inquiry there must always be a danger of confounding intention with a representation or a promise as to something future.—WILLS, J.

5. —— **Husband and Wife—Offences against the person.**

THE QUEEN *v.* CLARENCE, **22 Q. B. D. 23.**

6. —— **Larceny.**

THE QUEEN *v.* ASHWELL, **16 Q. B. D. 213.** If there must be both a taking and the *animus furandi* to constitute larceny, the difficulty is, how the changing a man's mind *ex post facto* can render an honest taking larceny. To uphold such a doctrine would be to refine in such a way as to destroy the simplicity of the criminal law.—ALDERSON, B., STEPHEN, J.

Nevertheless—The prisoner having obtained a loan of what he and the lender believed at the time was a shilling, afterwards discovered that the coin was a sovereign, and thereupon fraudulently appropriated it to his own use; and upon a conviction of larceny seven judges—in the Court for Crown Cases Reserved—were for affirming the conviction and seven for quashing it, and so the conviction stood.

7. —— **Letter written to Woman—Defamatory Libel.**

THE QUEEN *v.* ADAMS, **22 Q. B. D. 66.**

8. —— **Malice—Mens Rea.**

THE QUEEN *v.* TOLSON, **23 Q. B. D. 169.** The legislature may, for its own reasons, dispense in any given case with the necessity for a *mens rea*, and may constitute certain acts crimes in themselves; but this it generally does in very clear language. (In argument.)

172. To constitute a crime the guilty intent and act must both concur; but such guilty intent is not necessarily that of intending the very act prohibited, but it must be the intention to do some-

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CRIMINAL LAW—*continued.*

thing wrong; and (p. 181) it would appear to be enough if that something is immoral without being criminal.—WILLS, J.

187. "Malice" means different things in the case of (1) murder; (2) malicious mischief; (3) libel; (4) fraud and; (5) negligence: it is confusing (p. 185), therefore, to use the term *"mens rea,"* with reference to all these things indifferently.—STEPHEN, J.

9. —— **Misreception of Evidence.**

THE QUEEN *v.* GIBSON, **18 Q. B. D. 537.** In a criminal trial, if any evidence not legally admissible is left to the jury; the conviction is bad.—LORD COLERIDGE, C.J.

10. —— **Misprision.**

THE QUEEN *v.* BURGESS, **16 Q. B. D. 144.** "Misprision of felony" is the concealment of a felony and is a "negative" as opposed to a "positive" misprision.

CRIMINAL MATTER.

See Appeal. 4.

CRIMINATORY ANSWER.

See Bankruptcy. 7.

CRITICISM, LIMITS OF.

See Libel. 2.

CROSS-EXAMINATION.

1. —— **Commission—Abuse of Process of Court.**

DE MORA *v.* CONCHA, **32 Ch. D. 144.** I agree that he has not had an opportunity of cross-examination, but I am not sure that it was not his business to consider when the commission was issued, whether it might not be utilized for the purpose of obtaining the evidence on all the inquiries, which could have been done at an extremely small additional expense. I am inclined to think that this case has been fought in the way in which cases sometimes are fought by a resolute litigant, who, so to speak, lies upon his back and defies the other side, letting them do their best and taking every opportunity to object to what they do. The respondent ought not to have an opportunity of cross-examining if he does not *bonâ fide* want cross-examination, which is part of the machinery of justice and is only meant for the purpose of justice. If the power of cross-examination is used for the purpose of delay, that is an abuse of the process of the Court, and I think we ought to take great care whenever we have reason to think that an application to cross-examine is intended for the purpose of defeating justice or causing delay.—BOWEN, L.J.

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CROSS-EXAMINATION—*continued.*

2. —— Of party in Chambers—Evidence.

In re DAVIES. ISSARD *v.* LAMBERT, **44 Ch. D. 260.** If you wish to cross-examine you may do so, but under ordinary circumstances you must bring in your own evidence first, and cross-examine afterwards.—LINDLEY, L.J.

See Witness.

CRUCIFIX.

See Ecclesiastical Law. 5.

CRUELTY.

See Judicial Separation.

CY-PRÈS.

In re WHITE'S TRUST, **33 Ch. D. 453.** The rule stated in all the cases is that where there is a general gift to general purposes of charity, that gift may be sustained on the doctrine of *cy-près* although the particular objects fail or are no longer in existence. —BACON, V.C.

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D.

DAMAGES—MEASURE OF.

1. ——

DREYFUS *v.* PERUVIAN GUANO COMPANY, **42 Ch. D. 76.** A wilful trespasser in mining, taking coal which he knows belongs to another, has been charged with the value of the coal at the pit's mouth—that is, as a manufactured chattel—without any allowance for the cost of severing—in other words, for the cost of manufacture. The logic of such decisions is, no doubt, questionable. In such a case the plaintiff may get more than compensation for his loss. The disallowance of the cost of manufacture is rather by way of punishing a wilful wrongdoer than compensating the owner of the coal. But in those cases the cost of manufacture is allowed to the wrongdoer if his trespass has been a *bonâ fide* mistake, and not a wilful act of plunder, though the loss to the plaintiff is just the same.—KAY, J.

2. —— **Injury to Property—Injury to Reversion.**

RUST *v.* VICTORIA GRAVING DOCK COMPANY AND LONDON AND ST. KATHERINE DOCK COMPANY, **36 Ch. D. 135.** The problem to be solved is simply to find out the measure in money of the damage done to the houses and land by the flood. That is the thing to be got at. Having got at that, you have to consider how that sum ought to be apportioned among the persons interested in the property damaged, *i.e.*, in the present case, how much of that sum ought to be awarded to the plaintiff in respect of his interest, and how much to the tenants who are not before the Court.—LINDLEY, L.J.

See Land Clauses Consolidation Act, 1845. 1.
Principal and Agent, 9.
Ship. 11.

DEBENTURES.

See Company. 14.

DEBTOR AND CREDITOR—Agent for Payment—Stakeholder.

HENDERSON *v.* ROTHSCHILD, **33 Ch. D. 469.** A man who gives an order to his agent to pay a creditor can afterwards revoke that order. Where money has been placed in the hands of a stakeholder or trustee for payment of an existing debt, and the stakeholder or trustee informs the creditor that he has the money in

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DEBTOR AND CREDITOR—*continued.*

his hands for payment of that debt, that is irrevocable.—BACON, V.C.

DECEIT, ACTION OF—**False Representation—Fraud—Company.**

DERRY *v.* PEEK, **14 App. Cas. 339.** To support an action of deceit it always was necessary at Common Law and still is both there and in Chancery to prove fraud. . . . Fraud never has been and never will be exhaustively defined. . . It must be something which an honest man would not do. . . . No honest mistake, no mistake not prompted by a dishonest intention, is fraud. . . . A material misstatement may be a ground for rescinding the contract, but the consequences of fraud and of breach of contract are widely different. In an action for breach of contract the defendant must make good his words. In an action founded on fraud he must bear the whole of the consequences which have been induced by the fraudulent statement, which may be very extensive. The essence of fraud is the tricking a person into the bargain.—[SIR HORACE DAVEY, Q.C., in argument.]

343. Fraud without damage or damage without fraud does not give rise to such actions.—LORD HALSBURY, L.C.

374. I think the authorities establish the following propositions: first, in order to sustain an action of deceit, there must be proof of fraud, and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.—LORD HERSCHELL.

376. If I thought that a person making a false statement had shut his eyes to the facts, or purposely abstained from inquiring into them, I should hold that honest belief was absent, and that he was just as fraudulent as if he had knowingly stated that which was false.—LORD HERSCHELL.

See Company. 19.

DECK CARGO.

See Ship. 15.

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DEED, ALTERATION OF.

In re BATTEN. *Ex parte* MILNE, **22 Q. B. D. 692.** A deed can only be said to be altered if its effect is altered.—LORD ESHER, M.R.

696. The subsequent cancelling of an instrument which has conveyed an estate does not divest the estate.—FRY, L.J.

DEED OF ARRANGEMENT—Registration.

In re BATTEN. *Ex parte* MILNE, **22 Q. B. D. 685.** The time of registration is fixed with regard to the first execution of the instrument; and the Act is entirely silent as to the last execution of it. It leaves that matter entirely open. The form of the deed is left absolutely open by the statute; and it need not mention the creditors at all, by schedule or otherwise. An instrument which conveyed the property to a trustee requiring him to pay the creditors generally, and leaving him to find out who they were, would be within the scope of the Act.—FRY, L.J.

DEEDS OF ARRANGEMENT ACT, 1887.

DEFEASANCE.

See Bill of Sale. 6.

DELAY.

See Administration. 3.

DEPOSIT MONEY.

See Vendor and Purchaser. 6.

DESERTION.

See Divorce. 6.

DEVISE TO TRUSTEES.

RICHARDSON *v.* HARRISON, **16 Q. B. D. 111.** Where there is a devise to executors to sell, they have the estate vested in them; if the devise is merely that the executors shall sell, a power only is given.—COTTON, L.J.

DICTUM.

LIGHTBOUND *v.* HIGHER BEBINGTON LOCAL BOARD, **16 Q. B. D. 579.** The observation of Cave, J., in that case is only a "*dictum*," and was not necessary for the decision.

DIRECTORS.

See Company. 7.
Company. 8.

DIRECTORS LIABILITY ACT, 1890.

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DISBURSEMENTS.

See Costs. 8.

DISCHARGE.

See Bankruptcy. 4.

DISCLAIMER.

See Trustee. 3.

DISCONTINUANCE OF ACTION—Dismissal.

OWNERS OF CARGO OF THE "KRONPRINZ" *v.* OWNERS OF THE "KRONPRINZ." THE "ARDANHU," **12 App. Cas. 259.** Discontinuance is not dismissal of an action.—LORD HALSBURY, L.C.

DISCOVERY.

1. ——

ELDER *v.* CARTER. *Ex parte* SLIDE AND SPUR GOLD MINING CO., **25 Q. B. D. 198.** It has long been a rule well established (the origin of it I do not recollect) that you cannot get discovery except from a party to your action. There is another rule, equally old and well-established, that you cannot make a mere witness a party in order to get discovery from him.—LINDLEY, L.J.

2. —— **Documents of Title—Privilege.**

MORRIS *v.* EDWARDS, **23 Q. B. D. 289.** The defendant pleads that he is in possession, and therefore puts the plaintiffs to proof of their title . . . the defendant is entitled to say, that, though he has certain documents relating to the matter in dispute, such documents relate solely to his own title, and do not in any way support the plaintiff's title.—LORD ESHER, M.R.

3. —— **Interrogatories.**

MARRIOTT *v.* CHAMBERLAIN, **17 Q. B. D. 163.** The law with regard to interrogatories is now very sweeping. It is not permissible to ask the names of persons merely as being the witnesses whom the other party is going to call, nor to ask what is mere evidence of the facts in dispute. With these exceptions nearly anything that is material may now be asked. The right to interrogate is not confined to the facts directly in issue, but extends to any facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue.—LORD ESHER, M.R.

166. The mere circumstance that in making discovery of relevant facts the names of witnesses must be disclosed is not sufficient to take away the right to discovery.—FRY, L.J.

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DISCOVERY—*continued.*

4. —— **Privilege.**

LOWDEN *v.* BLAKEY, **23 Q. B. D. 334.** I do not think that the definition of Jessel, M.R., that the privilege accorded to confidential communications is restricted to the obtaining the assistance of lawyers as regards the conduct of litigation or the rights of property, is wide enough or is a definition of privilege in its fullest extent.—DENMAN, J.

5. —— **Privilege—Fraud.**

In re POSTLETHWAITE. *In re* RICKMAN. POSTLETHWAITE *v.* RICKMAN, **35 Ch. D. 726.** Where a solicitor is party to a fraud, no privilege attaches to the communications with him upon the subject, because the contriving of a fraud is no part of his duty as solicitor; and I think it can as little be said that it is part of the duty of a solicitor to advise his client as to the means of evading the law.—NORTH, J.

See Inspection of Documents.
Particulars of Demand.

DISMISSAL OF ACTION.

See Discontinuance of Action.
Final Judgment.

DISQUALIFICATION—Interest—Bias.

THE QUEEN *v.* FARRANT, **19 Q. B. D. 60.** It is a leading principle of English law that no one is allowed to be a judge in his own case; that means that the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judge.—STEPHEN, J.

DISTRESS.

See Landlord and Tenant. 7.
Law of Distress Amendment Act, 1888.

DIVORCE.

1. ——

STORY *v.* STORY AND O'CONNOR, **12 P. D. 198.** I come to the conclusion that the husband is not entitled to come into this Court and claim release from the bond of marriage, he having shewn himself regardless of the obligations of that state.—THE PRESIDENT (SIR J. HANNEN).

2. ——

HETHERINGTON *v.* HETHERINGTON, **12 P. D 114.** From the moment parties are authorized to live apart, the presumption which exists

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DIVORCE—*continued.*

in the case of married persons as to access and legitimacy of children is reversed.—THE PRESIDENT (SIR J. HANNEN).

3. —— **Assessment of Damages.**

KEYSE *v.* KEYSE, **11 P. D. 101.** Now I am obliged to explain the principle upon which damages are to be given; and, first, you must remember that you are not here to punish at all. Any observations directed to that end are improperly addressed to you. All that the law permits a jury to give is compensation for the loss which the husband has sustained. . . . The question in this case, as in so many others, is, whether or not these losses have been cast upon the petitioner by the action of the co-respondent. If he did not seduce her away from her husband, that makes a very material difference in considering the amount of damages to be given. In considering these questions, undoubtedly the conduct of the husband must be looked to.

102. The means of a co-respondent have nothing to do with the question. The only question is what damage the petitioner has sustained, and the damage he has sustained is the same whether the co-respondent is a rich man or a poor man.—THE PRESIDENT (SIR J. HANNEN).

4. —— **Decree Nisi—Queen's Proctor's Intervention.**

CRAWFORD *v.* CRAWFORD, **11 P. D. 157.** If the Queen's Proctor comes to the conclusion that there is a ground for supposing that a decree has been obtained contrary to the justice of the case, then it is his duty to intervene.—THE PRESIDENT (SIR J. HANNEN).

5. —— **Deed of Separation.**

MOORE *v.* MOORE, **12 P. D. 195.** There is no covenant in the deed not to sue, neither is there anything approaching to such a covenant. There is no condonation of past marital offences in the deed, and no expression pointing to condonation. . . . Under all the circumstances of this case, I pronounce a decree for judicial separation.—BUTT, J.

6. —— **Desertion.**

GARCIA *v.* GARCIA, **13 P. D. 217.** The wife is not entitled to her decree for divorce unless there has been desertion for two years and upwards, as well as adultery.—BUTT, J.

219. If a man is living with another woman, the wife is justified in saying, "I shall not return to you, nor shall I allow you to

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DIVORCE—*continued.*

have access to me while you are living in open adultery with another woman."—THE PRESIDENT (SIR J. HANNEN); BUTT, J.

7. —— **Evidence.**

PRYOR *v.* PRYOR, **12 P. D. 166.** The father's evidence is not admissible to bastardise the child.—THE PRESIDENT (SIR J. HANNEN).

8. —— **Husband and Wife both guilty—Costs of Wife.**

OTWAY *v.* OTWAY, **13 P. D. 150.** In my opinion the true principle is this, that a wife having been guilty of adultery has put herself in such a position that she cannot be considered as an innocent party in any proceedings which might have been taken in the old Ecclesiastical Courts, or, which might now be taken in the Court of Divorce; and therefore on that ground she is not in a position to come to that Court to give her any relief as to any matrimonial offence which the husband may have committed, or to put it on the ground of compensation for a crime of the same nature.

154. The general rule is this, although the Regulation 159 is that there shall be no costs in a suit for dissolution where the wife has been found guilty of adultery, except what at the hearing the judge who tries it in his discretion allows her, yet, as a rule, unless it has been proved that there is some reason why costs should not be allowed, provision is made for the wife's costs, both in defending herself and in bringing her case against her husband, by ordering the husband to provide those costs; in fact, to pay them.

155. If, after she had been found guilty of adultery she had herself actively brought the matter before this Court, then I should have thought no provision ought to be made for her costs. —COTTON, L.J.

9. —— **Impotence.**

A.'s DIVORCE BILL, **12 App. Cas. 367.** Allegation that no marriage, as no consummation.

10. —— **Queen's Proctor—Wife's Costs.**

BUTLER *v.* BUTLER, **15 P. D. 34.** It has not been the practice to order a husband to pay a sum of money or to give security for a wife's costs in a trial with the Queen's Proctor.—BUTT, J.

11. —— **Wife's Costs.**

BEGG *v.* BEGG, **15 App. Cas. 171.** An application for the appellant's costs in the divorce appeal was refused, on the ground that

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DIVORCE—*continued.*

the rule laid down by the Lord Justice Clerk (Lord Moncreiff), in *Kirk* v. *Kirk*, "that as long as the wife has a probable ground of defence she may defend herself to the end at her husband's expense; and cases may be imagined in which she would be entitled to go to the House of Lords," has been considerably modified. The proper rule being that, except in a very exceptional case, the wife is not entitled to be paid her costs by her husband, except upon the theory that she is still his wife. And that here the appellant had the judgment of the Lord Ordinary, and that of the Inner House against her, that she had been guilty of a matrimonial offence, and had ceased to be the wife of the respondent.—LORDS HERSCHELL, WATSON and MORRIS.

DOCUMENTS OF TITLE.

See Discovery. 2.

DOMICIL.

1. ——

McMULLEN *v.* WADSWORTH, **14 App. Cas. 634.** Sir Robert Phillimore, in his work on the Law of Domicil (p. 17), remarked, and in their Lordships' opinion correctly so, that it might have been more correct to have limited the use of the word "domicil," to that which was the principal domicil, and to have designated simply as residences the other kinds of domicil: but a contrary practice has prevailed, and the neglect to distinguish between the different subjects to which the law of domicil is applicable has been the chief source of the errors that have occasionally prevailed on this subject.—SIR BARNES PEACOCK.

2. ——

COLQUHOUN *v.* BROOKS, **19 Q. B. D. 416.** The personal property of a deceased person is considered by English law as subject to the law of the domicil of the deceased.—STEPHEN, J.

3. —— **Abandonment of—Revival of.**

In re MARRETT. CHALMERS *v.* WINGFIELD, **36 Ch. D. 407.** The domicil of origin clings to a man unless he has acquired a domicil of choice by residence in another place, with an intention of making it his permanent place of residence. If a man loses his domicil of choice, then, without anything more, his domicil of origin revives; but in my opinion, in order to lose the domicil of choice, once acquired, it is not only necessary that a man should be dissatisfied with his domicil of choice, and form an intention to leave it, but he must have left it, with the intention of leaving it permanently.—COTTON, L.J.

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DONATIO MORTIS CAUSÂ.

In re DILLON. DUFFIN *v.* DUFFIN, **44 Ch. D. 83.** It is contended that a deposit note cannot be the subject of a *donatio mortis causâ.* Why should it not? There is at first sight this difficulty, that it is not a negotiable instrument; consequently a donee of it cannot sue on it in his own name, and the gift being voluntary, the Court according to its ordinary principles will not compel either the donor or his executors to do anything to perfect it. But that difficulty was disposed of long ago in *Duffield* v. *Elwes.* In that case . . . the House of Lords . . . held that the principle of not assisting a volunteer to perfect an incomplete gift does not apply to a *donatio mortis causâ.*—LINDLEY, L.J.

DOUBLE PORTION—Satisfaction—Ademption.

MONTAGU *v.* EARL OF SANDWICH, **32 Ch. D. 534.** If the testator had not been a father, or a person in the position of a father, there would have been no question; but as between father and son the presumption arises that a father does not intend to give double portions to his children; that is to say, if a father has made a provision by way of covenant in favour of his child before the date of his will, then unless it appears upon the will or by parol testimony (which in such cases is admitted in rather an anomalous way in order to rebut the presumption) that he intends to give the benefit conferred by will in addition to that which is already secured to the child by covenant, then the child will not take both. In other words, the benefit given by will is presumed to be given on an implied condition that if the son takes it he must give up and surrender that which has been already secured to him by covenant. The same presumption arises in another form where the father, by his will, gives a benefit to a son, and afterwards, on his marriage, or upon some other event, makes a settlement upon him; and there again the latter provision is considered as an ademption of the previous gift by will, unless it can be seen, either by parol testimony as to the intention of the father, or by something appearing upon the documents, that the son is intended to have both.—COTTON, L.J.

DURESS.

See Marriage, Nullity of. 2.

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E.

EASEMENT—Prescription—Landlord and Tenant.

CHAMBER COLLIERY COMPANY *v.* HOPWOOD, **32 Ch. D. 559.** Either the enjoyment of this artificial watercourse was under the lease (I do not say that it was), in which case there would be no adverse enjoyment as of right, but a mere enjoyment by virtue of rights created by the lease itself, or if not an enjoyment under the lease, it may have been an enjoyment which took place under a belief by both parties that it was under the lease, and if so, it would be an enjoyment intended by the parties to operate only during that lease, or else if it was neither of those two kinds of enjoyment, it was an enjoyment under that sort of friendly comity which prevails between persons who have business relations existing between them, the friendly comity existing between a landlord and a tenant, when, for the mutual convenience of both parties, the landlord does not insist upon his strict right, but the tenant never supposes for a moment that he is gaining any adverse right as against the landlord merely because the landlord is indulgent. —BOWEN, L.J.

ECCLESIASTICAL LAW—Burial—Faculty—Families of Parishioners—Non-parishioners.

1. ——

In re SARGENT, **15 P. D. 169.** After death the burial of a non-parishioner can take place with the consent of the vicar . . . a faculty may be obtained for a monument to a non-parishioner . . . a faculty may be obtained for removing a body from one churchyard to another . . . for example, a petition presented to the chancellor of the diocese of London by Thomas Duley, of 8, High Street, Uxbridge, for a licence or faculty to be buried in the grave of his parents in the churchyard of the parish of Bedfont, of which parish his parents were parishioners. The faculty, granted April 26, 1887, reserved the said grave to Thomas Duley as a burial-place for himself, exclusive of all others.

2. —— **Church Discipline Act—Criminal Offence.**

IN THE MATTER OF A. B., **11 P. D. 58.** Conduct and acts, though not constituting a criminal offence, may well be the subject of ecclesiastical censure.—LORD PENZANCE.

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ECCLESIASTICAL LAW—*continued.*

3. —— **Churchyard—Burial of Strangers.**

HUGHES *v.* LLOYD, **22 Q. B. D. 162.** I will not enter upon the question as to who is the proper person to give permission for strangers to be buried in a parish churchyard, whether it be the incumbent or the churchwardens.—LORD COLERIDGE, C.J.

4. —— **Jurisdiction of Archbishop of Canterbury to try a Bishop.**

READ *v.* BISHOP OF LINCOLN, **14 P. D. 88.** Held, that the archbishop sitting alone or with assessors had jurisdiction to entertain the charge.—THE ARCHBISHOP OF CANTERBURY.

104. The decrees of the first four general councils in matters of faith and doctrine are received, and have authority in England.—THE ARCHBISHOP OF CANTERBURY.

109. The canons of order and discipline passed in those same councils (and at less important synods) as to matters of ecclesiastical procedure and legal practice are on another footing, and have no authority in England.—THE ARCHBISHOP OF CANTERBURY.

105. The following canons were adduced (without mentioning dates) and considered by the Archbishop of Canterbury :—

1. The canons called Apostolic.
2. The canons of Antioch (A.D. 341).
3. The canons of Constantinople (A.D. 381).
4. The canons of Chalcedon (A.D. 451).

The councils mentioned by him (without mentioning dates) were :—

1. The Synod of Antioch (A.D. 341).
2. The Council of Chalcedon (A.D. 341).
3. The Great Council of Constantinople (A.D. 381).
4. The General Council of Chalcedon (A.D. 451).

109. The creeds and sacred definitions deal with things eternal. The canons and the discipline deal with things of spiritual concernment but in temporal regions and for temporary uses. The canons themselves take into account the conditions of their own times and countries. So must the ecclesiastical procedure of every age and nation. The procedure and practice of Courts must of necessity vary with the constitution of a country, and the institutions, organizations, and usages of communities, both ecclesiastical and civil. These have been in perpetual movement and life, and those canons as they stand do not now answer to the actual practice of any Christian Church.—THE ARCHBISHOP OF CANTERBURY.

116. Dr. Stubbs, Bishop of Oxford, writes :—Before the Reformation the Provincial Convocation may be fairly regarded as a

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ECCLESIASTICAL LAW—*continued.*

Court attendant on and assessing to the archbishop, discussing cases of litigation or correction which were brought before him therein or were laid by him before the clergy. But we are inclined to believe that, so far as jurisdiction was concerned, the authority resided in the metropolitan and not in the synod.—THE ARCHBISHOP OF CANTERBURY.

117. The Court, therefore, holds that while Convocation is a Court of which the President "*sedet judicialiter*" with the bishop's "*assistentes*," and while there may be causes, processes, or controversies which would be necessarily and usefully heard and determined there (proper conditions being fulfilled), it has not been established that it is the only proper Court for the trial of a bishop, and no instance of such a trial has been adduced.—THE ARCHBISHOP OF CANTERBURY.

118. England resisted the intrusion of foreign legates, sent from time to time to . . . supersede the action of the metropolitans. . . . Not only the kings but archbishops like Anselm remonstrated against the aggression. According to Anselm, the Archbishops of Canterbury, by the law and custom of the Church, possessed all the rights and powers that were by the delegation of the Pope's powers bestowed upon the legates.—DR. STUBBS.

5. —— **Decorations forbidden by law—Public Worship Regulation Act, 1874.**

THE QUEEN *v.* BISHOP OF LONDON, **23 Q. B. D. 426.** The placing and retaining a crucifix on the top of the screen separating the chancel of the church from the body or nave is illegal.—MANISTY, J.

428. "The whole circumstances of the case," do not include the consideration and decision of an undecided question of law, so as to leave no appeal and stop proceedings absolutely—MANISTY, J.

443. The bishop's general objection to litigation does not appear to me to be such a reason as I ought to hold to be a compliance with the plain meaning of the Act of Parliament.—LORD COLERIDGE, C.J.

448. The rood or the crucifix, wherever placed, has been, and has been intended for, an object of worship. . . . If this is not in the ordinary sense of the word a crucifix or rood, and liable to abuse, one must distrust the evidence of one's eyes and unlearn all one's history.—LORD COLERIDGE, C.J.

449. The construction, therefore, placed by the Bishop of London on the case to which he refers as his authority appears to

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ECCLESIASTICAL LAW—*continued.*

me so entirely mistaken that I must treat any reason founded upon that construction as no reason within the statute.—LORD COLERIDGE, C.J.

6. —— **Public Worship Regulation Act, 1874.**

THE QUEEN *v.* BISHOP OF LONDON, **24 Q. B. D. 224.** It is alleged that the bishop has either exceeded his jurisdiction or declined jurisdiction. . . . The controversy has mainly turned upon the phrase, "after considering the whole circumstances of the case." . . . It is said that his power or duty of exercising a discretion is limited, and does not arise unless and until he has considered the whole circumstances of the case in the sense that, if he has failed to consider each and every circumstance of the case, his power or duty of exercising a discretion has not come into play. I think that we must in construing the section have regard to the rule of construction laid down by Lord Selborne in one of the cases cited, to the effect that it is useless to enter into an inquiry with regard to the history of an enactment and any supposed defect in the former legislation on the subject, which it was intended to cure, in cases where the words of the enactment are clear. It is only material to enter into such an inquiry where the words of an enactment are ambiguous and capable of two meanings, in order to determine which of the two meanings was intended. In the first place, therefore, we ought to look at the words of the section itself, and to read it according to the well-known canon, in order to see what the words in their ordinary grammatical sense in the English language mean as applied to such a subject-matter as that with which the section deals.—LORD ESHER, M.R.

226. The words are, in my opinion, enabling words. They enable the bishop to go beyond a certain limit, and to go to any limit with regard to the circumstances he considers, subject only to the limitation that they must be circumstances of the case; and, if the bishop has honestly and fairly undertaken to consider the circumstances of the case, but without wilfully or unfairly refusing to consider any such circumstance, has failed to consider some circumstances which may be shewn to have existed, and has considered others, then I do not think that he has failed to undertake the duty cast upon him. He has not refused to exercise the discretion given to him, merely because he may not have considered each and every circumstance of the case. Then there is the other branch of the argument—viz., that as to excess of

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ECCLESIASTICAL LAW—*continued.*

jurisdiction. I think that the bishop would have exceeded his jurisdiction if he had considered something which was not a circumstance of the case, and had acted upon it. That he should have considered it would not, I think, be enough; it would have to be shewn that he had acted upon it. In order, therefore, to shew a refusal of jurisdiction, it must be shewn that the bishop has refused to consider the circumstances of the case; in order to shew an excess of jurisdiction, it must be shewn that he has considered and acted on something which is not a circumstance of the case.—LORD ESHER, M.R.

228. Lord Cairns in *Julius* v. *Bishop of Oxford* has mentioned the kind of collateral circumstances which may be gone into. The bishop may bring his own knowledge of facts to bear: he may consider the expediency of the particular litigation with regard to the welfare of the Church; he may also consider the position of a clergyman complained of, whether he is likely to repeat the matter complained of, and anything that may have happened, such as a promise made by the clergyman to himself not to repeat it. All these are obviously collateral circumstances, and not part of the facts of the controversy. The words, "the whole circumstances of the case," therefore include all such collateral circumstances, the only limitation being that the bishop must not go into and found his opinion upon a circumstance which cannot even collaterally be a circumstance of the case.—LORD ESHER, M.R.

231. The onus lies on those who ask for a mandamus to shew that there has been a refusal or excess of jurisdiction.

I decline to enter into a minutely critical examination of the particular expressions made use of by the bishop. We must look at his reply as a whole, and consider whether, fairly interpreting it, we can see from it that he has done what is alleged.—LORD ESHER, M.R.

233. Then he goes on to make certain general statements about the evils of litigation on ecclesiastical matters. And, if he had acted on those taken alone, it may be that he would have been wrong.—LORD ESHER, M.R.

234. I think, with deference to the Lord Chief Justice, that the fear of giving too dictatorial a power to the bishops has caused him to consider this matter rather as if he were considering the propriety of the provisions of the Act than the question whether the bishop has acted within those provisions.—LORD ESHER, M.R.

237. The bishop is not at liberty to set any law of the land at

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ECCLESIASTICAL LAW—*continued.*

defiance, and he cannot, under cover of forming an opinion under the power conferred upon him by this section, prevent the law from being enforced against persons who persist in doing that which he knows to be plainly illegal. But what is legal or illegal with respect to images, crosses, crucifixes, and other things of the sort in churches depends on whether they do or do not, or will or will not, encourage or lead to idolatrous or superstitious worship in the place where they are or are to be put; and, if in any particular case the bishop is of opinion that a particular image, cross, crucifix, or other piece of sculpture, has no tendency to encourage such worship, he is, in my opinion, perfectly justified in stopping litigation on the subject. In every such case it appears to me that the bishop may properly consider what are the interests of the Church in the matter, by which I understand the advantages or disadvantages (to other persons than those complaining and complained of) which will result from stopping further litigation. To exclude such considerations would, in my opinion, be unduly to limit his power and duty to consider "the whole circumstances of the case."—LINDLEY, L.J.

240. The only remedy is to lay before him a fresh representation pointing out the supposed mistake. He could then, and, if satisfied that he ought, he, of course, would correct his mistake by not staying proceedings on the renewed representation. It would be a great mistake to suppose that the High Court has no jurisdiction over bishops in such cases as those now under consideration. The duty of every bishop, as of every subject, is to obey the law, whether he approves it or not, and, if he fails to perform that duty, he immediately becomes amenable to the High Court. If a representation is made to a bishop under the Public Worship Regulation Act, the bishop has no right to stay proceedings upon it until he has considered the whole circumstances of the case, and come to the opinion that proceedings upon it should not be taken. —LINDLEY, L.J. [Affirmed [1891] A. C. 666.]

7. —— **Parish Church—Jurisdiction.**

BATTEN *v.* GEDYE, **41 Ch. D. 507.** The Ecclesiastical Court having full jurisdiction, the High Court will not exercise jurisdiction in respect of such an interference at the suit of a parishioner.

The lay rector of a parish, in respect of his freehold property in the parish church and churchyard, can maintain an action in the High Court against a trespasser.

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ECCLESIASTICAL LAW—*continued.*

A person not resident in a parish but owning property within it in respect of which he pays parish rates is a "parishioner" and entitled to sue as such.

8. —— **Right appurtenant to House—Long User and Acts of Ownership—Presumption of Legal Origin—Faculty.**

HALLIDAY *v.* PHILLIPS, **23 Q. B. D. 48.** Where there has been long continued enjoyment by successive owners of a house and acts inconsistent with mere possession by the permission of the churchwardens (who are the Ordinary's officers to dispose of and arrange the seats) a faculty must be presumed; the repair to a pew is evidence against the Ordinary of more than mere possession; and *held* (in case where church was restored under a faculty) that the plaintiff was entitled to have a pew on the site of the former pew.—LORD ESHER, M.R.; BOWEN and FRY, L.JJ.

[*See* 1891, A. C. p. 228.]

EFFICIENT CAUSE.

See Insurance, Marine. 7.

ELECTION.

1. —— **Compensation.**

In re LORD CHESHAM. CAVENDISH *v.* DACRE, **31 Ch. D. 473.** The principle upon which the doctrine of election is based is that a man shall not be allowed to approbate and reprobate. . . . Lord Eldon confines the engrafted doctrine of compensation to the case of taking against the instrument, and describes it as arising from the conduct of the person electing so to take. He says: "In our Courts we have engrafted upon this primary doctrine of election, the equity as it may be termed of compensation. Suppose a testator gives his estate to A., and directs that the estate of A., or any part of it, should be given to B. If the devisee will not comply with the provision of the will, the Courts of Equity hold that another condition is to be implied, as arising out of the will, and the conduct of the devisee; that inasmuch as the testator meant that his heir-at-law should not take his estate which he gives A., in consideration of his giving his estate to B.; if A. refuses to comply with the will, B. shall be compensated by taking the property, or the value of the property, which the testator meant for him, out of the estate devised, though he cannot have it out of the estate intended for him.—CHITTY, J.

2. —— **Restraint on Anticipation.**

In re VARDON'S TRUSTS, **31 Ch. D. 279.** The presumption of a

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ELECTION—*continued.*

general intention in the authors of an instrument that effect shall be given to every part of it, upon which the doctrine of election rests, may be repelled by the declaration in the instrument itself of a particular intention inconsistent with the presumed and general intention.—FRY, L.J.

EMPLOYERS' LIABILITY ACT, 1880.

KELLARD *v.* ROOKE, **19 Q. B. D. 588.** How can it be said that a "ganger," the foreman of a gang of labourers, who is working with his hands all the day, is a person whose sole or principal duty is superintendence, and who is not ordinarily engaged in manual labour? It is only necessary to state the proposition, to shew that the case is not within s. 1, sub.-s. 2.—A. L. SMITH, J.

See Master and Servant. 5.

ENDOWED SCHOOLS ACT, 1869.

In re ENDOWED SCHOOLS ACT, 1869. *In re* CHRIST'S HOSPITAL, **15 App. Cas. 172.**

EQUITABLE CONVERSION.

See Vendor and Purchaser. 5.

EQUITABLE MORTGAGE—**Conflicting Equities—Priority.**

In re RICHARDS. HUMBER *v.* RICHARDS, **45 Ch. D. 589.**

See Annuitants.

Mortgage. 6.

Mortgage. 7.

EQUITY.

In re LORD CHESHAM. CAVENDISH *v.* DACRE, **31 Ch. D. 472.** A Court of Equity never decrees an act to be done which is a breach of trust, or a mere idle act which could only lead to litigation.—CHITTY, J.

See Common Law. 2.

Law. 2.

Settlement. 3.

EQUITY, COURTS OF.

DERRY *v.* PEEK, **14 App. Cas. 352.** I think that in this kind of case, as in some others, Courts of Equity have made the mistake of disregarding a valuable general principle in their desire to effect what is, or is thought to be, justice in a particular instance.—LORD BRAMWELL.

EQUITY TO A SETTLEMENT.

See Executor. 8.

Husband and Wife. 1.

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ESCROW.

WHELAN *v.* PALMER, **39 Ch. D. 655.** I have always considered it as a clear point, that if the instrument be delivered upon condition, that constitutes it an escrow.—LORD ST. LEONARDS; KEKEWICH, J.

656. Where, by express declaration or from the circumstances, it appears that the delivery of a deed was not intended to be absolute, but that the deed was not to take effect until some contemplated event should have happened, the deed is not a complete and perfect deed until that event has happened.—WILLIAMS, J.; KEKEWICH, J.

ESTOPPEL.

1. ——

SETON *v.* LAFONE, **19 Q. B. D. 70.** An estoppel does not in itself give a cause of action; it prevents a person from denying a certain state of facts. One ground of estoppel is where a man makes a fraudulent misrepresentation and another man acts upon it to his detriment. Another may be where a man makes a false statement negligently, though without fraud, and another person acts upon it. And there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an estoppel. It is laid down in the judgment in *Carr* v. *London and North Western Railway Company* that "if, in the transaction itself which is in dispute, one has led another into the belief of a certain state of facts by conduct of culpable negligence calculated to have that result, and such culpable negligence has been the proximate cause of leading, and has led the other to act by mistake upon such belief to his prejudice, the second cannot be heard afterwards as against the first to shew that the state of facts referred to did not exist."—LORD ESHER, M.R.

2. —— **Negligence, action for—Representations causing Damage.**

BISHOP *v.* BALKIS CONSOLIDATED COMPANY, **25 Q. B. D. 83.** Duty is essential to an action of negligence or estoppel by reason of negligence, but not to an action claiming compensation for damages sustained by acting on representations made for the purpose that they should be acted on.—WILLIAMS, J.

See Brokers.
Contract. 5.
Shares.

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EVIDENCE.

1. —— **Evidence abroad—Commission.**

COCH *v.* ALLCOCK, **21 Q. B. D. 181.** A commission to take evidence abroad is a matter of judicial discretion, and ought only to be granted on reasonable grounds being shewn for its issue.—LORD ESHER, M.R.

2. —— **Evidence of foreign law.**

See Foreign Law, Evidence of.

3. —— **Letters.**

See Legitimacy. 1.

4. —— **Parish Registers—Proceedings between Strangers.**

LYELL *v.* KENNEDY, **14 App. Cas. 448.** Foreign registers of baptisms and marriages, or certified extracts from them, are receivable in evidence in the Courts of this country, as to those matters which are properly and regularly recorded in them, when it sufficiently appears (in the words of Mr. Hubback's learned work on Evidence), that they have been kept under the sanction of public authority, and are recognized by the tribunals of the country (*i.e.* of the country where they are kept) as authentic records.

450. With respect to the proceedings in 1766, in the Sheriff's Court of Perthshire (which were produced from the proper custody), I consider them also admissible, on the same principle on which answers and decrees in Chancery have been admitted by this House in Peerage cases, as to matters of pedigree, when the facts of the pedigree were not in dispute, but only incidentally stated. . . . In the Shrewsbury Peerage Case this House received an Irish answer as to matters of pedigree, though the answer was without oath or signature; Lord Wensleydale saying: "It (the answer) must be received as the statement of the party making it, and being found on the files of the Court, it must be presumed that it got there by proper authority." To make an answer evidence, the bill to which it was an answer must always be put in; but the bill itself is not evidence unless made so by the answer.—EARL OF SELBORNE.

See Bankruptcy. 7.
Criminal Law. 9.
Cross-examination. 2.
Divorce. 7.
Legitimacy. 2.
Probate.
Trial by Jury. 2.

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EXCESSIVE DAMAGES.

See New Trial. 2.

EXCLUSIVE DEALING.

See Conspiracy. 2.

EXECUTION CREDITOR.

HANCOCK *v.* SMITH, **41 Ch. D. 461.** An execution creditor can only lay hold of what is the property of his debtor.—COTTON, L.J.

462. An execution creditor can only take subject to all equities. —FRY, L.J.

EXECUTORS.

1. ——

In re SMITH. HENDERSON-ROE *v.* HITCHINS, **42 Ch. D. 305.** The moment the executors assented to the bequest, they became trustees for their "*cestuis que trustent*," the £400 then ceased to be part of the testator's assets, and it became a trust fund for the benefit of the plaintiff for life, and afterwards for his children, and the executors became mere trustees for them of that fund.—LORD ROMILLY, M.R.; NORTH, J.

2. —— **Administrators—Advertisements for Creditors.**

In re BRACKEN. DOUGHTY *v.* TOWNSON, **43 Ch. D. 5.** In this Court we never allow an estate to be distributed without notice being inserted in the *London Gazette*, and generally we require an advertisement to be inserted in the *Times*. When an estate is administered of a testator in the country, the notice is also inserted in some newspaper having a local circulation in the neighbourhood.—LORD ROMILLY, M.R.

9. There must be an advertisement in the *Gazette*, and whether there should be other advertisements in other London papers must be decided by the circumstances of the case.—COTTON, L.J.

3. —— **Lease—Liability.**

In re BOWES. EARL OF STRATHMORE *v.* VANE. NORCLIFFE'S CLAIM, **37 Ch. D. 133.** Executor of lessee for years is, in the absence of other assets, liable *de bonis propriis*, for the rent reserved, to the extent to which he might, by the exercise of reasonable diligence, have derived profit from the premises.

134. Where the rent reserved exceeds the value of the premises, an executor, in the character of assignee, is liable to the extent of such value, and where the value exceeds the rent reserved, to the extent of such rent.—MAULE, J.; NORTH, J.

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EXECUTORS—*continued.*

4. —— **Notice of Liability—Notice of Debt—Refunding by Residuary Legatee.**

WHITTAKER *v.* KERSHAW, **45 Ch. D. 325.** If an executor pays away the residue to the residuary legatee without knowledge of anything that interferes with the right to receive it, and debts are subsequently discovered which he is obliged to pay, he can call on the residuary legatee to refund. If an executor pays the money to the residuary legatee with knowledge of a debt, and he is afterwards obliged to pay that debt, he no doubt cannot call on the residuary legatee to refund. It is urged that here there was notice of a debt. But there was no debt until a call was made. There was only a liability which might become a debt. Now it was held by Jessel, M.R., in *Jervis* v. *Wolferstan*, that notice of a liability when the executor pays over a residue does not take away his right to make the residuary legatee refund if it afterwards becomes a debt.—COTTON, L.J.

5. —— **Retainer.**

In re BAKER. NICHOLS *v.* BAKER, **44 Ch. D. 272.** The right of an executor to retain is a common law legal right. A man cannot sue himself, and out of that the law developed the right of an executor to retain a debt due to him from the testator. That right has been disapproved of by those who have had the development of equitable jurisdiction, and they declined to follow the law by applying it to equitable assets.—LINDLEY, L.J.

6. —— **Retainer.**

In re MAY. CRAWFORD *v.* MAY, **45 Ch. D. 499.**

7. —— **Retainer.**

In re WELLS-MOLONY *v.* BROOKE, **45 Ch. D. 573.** The only question which appears to me to arise is this: whether it is right and proper that a receiver should be appointed simply on the ground that Lord Brooke may exercise the legal right of retainer which is vested in him to the prejudice of the general creditors of the testator. The question in that precise form does seem to have been the subject of decision; but there are certain decisions which have been referred to which appear to me to indicate clearly the course which I ought to take under the circumstances. In the case of *European Assurance Society* v. *Radcliffe*, it was decided by the late Master of the Rolls that "where an executor or administrator, after the commencement of a creditors' administration action and before judgment, has voluntarily paid any creditor in full, the rule in Equity and not at law must now

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EXECUTORS—*continued.*

prevail, under Judicature Act, 1873, s. 25, sub-s. 11, and he will accordingly be held to have made a good payment, and will be allowed it in passing his accounts, even though he may have had notice of the action before payment." That decision has been recently followed by the Court of Appeal.

575. The principle is, that a plaintiff in an administration action is only entitled to *interim* relief against the administrator or executor when a case is shewn of assets being wasted. The law allows the administrator or executor to prefer one creditor to another, and there is no equity which entitles the Court to interfere, except after judgment for administration.—STIRLING, J.

8. —— **Retainer—Equity to a Settlement.**

In re BRIANT. POULTER *v.* SHACKEL, **39 Ch. D. 476.** Does a wife's equity to a settlement precede the executor's right of retainer for the husband's debt or *vice versâ?* The wife may take proceedings to assert her equity whether before or after a claim is made by the husband. . . . I do not hesitate to say the wife's equity is prior to the executor's right of retainer.—KAY, J.

9. —— **Executor entitled absolutely.**

In re BACON'S WILL. CAMP *v.* COE, **31 Ch. D. 463.** The rule is clearly established, that the executor shall have the residue, unless there is a strong and violent presumption to the contrary. —KAY, J.

See Administration. 1.
Administration. 2.
Administration. 4.
Administration. 5.
Company. 4.
Company. 10.

EXECUTORY DEVISE.

See Remainder.

EXONERATION OF PERSONAL ESTATE.

See Will. 8.

EXTRA JUDICIAL OPINION.

See Habeas Corpus. 2.

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F.

FACTORS ACT, 1889.

To amend and consolidate the Factors Acts.

FACULTY.

See Ecclesiastical Law. 1.
Ecclesiastical Law. 8.

FALSE PRETENCES.

See Criminal Law. 4.

FAMILY SETTLEMENT—Influence of Father.

HOBLYN *v.* HOBLYN, **41 Ch. D. 200.** As to what special considerations the Court will give weight to in upholding family arrangements involving a re-settlement, *e.g.*, the duty of preserving in the family property hitherto held by it, of providing for members not intended to succeed to it, of preserving the honour of the family.

204. It is not uncommon on such an occasion to take out of settlement some property convenient to be sold or to be diverted to other uses. It is at least as common for one of the parties to bring in some property convenient to be included which he has acquired as his own. [The reference to counsel in such cases to advise a young man independently is a commendable practice. The Court approves of the exercise of the paternal influence where there has been no large departure from the practice usually followed on re-settlement; but the father must not acquire a benefit to the detriment of the son.]—KEKEWICH, J.

FETTER ON REDEMPTION.

See Mortgage. 5.

FICTITIOUS SALE.

See Bill of Sale. 7.

FINAL JUDGMENT—Dismissal of Action.

In re RIDDELL. *Ex parte* EARL OF STRATHMORE, **20 Q. B. D. 518.** This order dismissing the action for want of prosecution does not preclude the plaintiff from commencing a fresh action for the same cause of action. To my mind, that seems a conclusive answer to the question whether the order is a final "judgment." —LOPES, L.J.

FINES.

See Copyhold. 2.

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FISHING INTERROGATORIES.

See Interrogatories. 2.

FOOTWAYS.

See Highway. 2.

FOREIGN JUDGMENT.

NOUVION *v.* FREEMAN, **15 App. Cas. 8.** Where a Court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained.—PARKE and ALDERSON, BB.

But it was conceded, and necessarily conceded, by the learned counsel for the appellant, that a judgment, to come within the terms of the law as properly laid down, must be a judgment which results from an adjudication of a Court of competent jurisdiction, such judgment being final and conclusive.—LORD HERSCHELL.

FOREIGN LAW, EVIDENCE OF.

CONCHA *v.* MURRIETA. DE MORA *v.* CONCHA, **40 Ch. D. 550.** In our Courts foreign law is a matter of fact to be decided on evidence, and the proper evidence is that of experts—that is to say, of advocates practising in the Courts of the country whose law our Courts want to ascertain.—COTTON, L.J.

FORFEITURE.

See Absolute Gift.

FORFEITURE CLAUSE.

See Settlement. 5.

FRAUD.

See Contract. 6.

Deceit, action of.

FRAUD ON POWER.

See Power of Appointment. 1.

FRAUDULENT CONVEYANCE.

See Bankruptcy. 8.

FRAUDULENT MARKS ON MERCHANDISE.

See Merchandise Marks Act, 1887.

FRAUDULENT PREFERENCE.

See Company. 11.

FRIENDLY SOCIETIES ACT, 1887.

FUNERAL EXPENSES.

See Administration. 5.

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G.

GARNISHEE ORDER.

1. ——

In re COMBINED WEIGHING AND ADVERTISING MACHINE COMPANY, **43 Ch. D. 105.** In any case I cannot see here that this statutory relation, which was created originally by the Common Law Procedure Act of 1854, and was perpetuated in the rules under the Judicature Act, is really a relation involving the creation of a fresh debt. There cannot be said to be any equitable debt. There is no assignment in equity, and I cannot see that there is any legal debt.—BOWEN, L.J.

2. —— **Prior Equitable Charge.**

In re GENERAL HORTICULTURAL COMPANY. *Ex parte* WHITEHOUSE, **32 Ch. D. 515.** A charging order charges only what the judgment debtor can himself honestly deal with.—CHITTY, J.

GENERAL AVERAGE.

See Insurance, Marine. 1.
Ship. 14.
Ship. 15.

GENERAL DEVISE.

See Will. 12.

GENERAL WORDS.

See Construction. 3.

GIFT—Passing of Property.

COCHRANE *v.* MOORE, **25 Q. B. D. 75.** Upon long consideration, I have come to the conclusion that actual delivery in the case of a "gift" is more than evidence of the existence of the proposition of law which constitutes a gift, and I have come to the conclusion that it is a part of the proposition itself. It is one of the facts which constitute the proposition that a gift has been made. It is not a piece of evidence to prove the existence of the proposition; it is a necessary part of the proposition, and, as such, is one of the facts to be proved by evidence. The proposition is not—that the one party has agreed or promised to give, and that the other party has agreed or promised to accept. In that case, it is not doubted but that the ownership is not changed until a subsequent actual delivery. The proposition before the Court on a question of gift or not, is—that the one gave and the other accepted. The trans-

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GIFT—*continued.*

action described in the proposition is a transaction begun and completed at once. It is a transaction consisting of two contemporaneous acts, which at once complete the transaction, so that there is nothing more to be done by either party. The act done by the one is that he gives; the act done by the other is that he accepts. These contemporaneous acts being done, neither party has anything more to do. The one cannot give, according to the ordinary meaning of the word, without giving; the other cannot accept then and there such a giving without then and there receiving the thing given. After these two things done, the donor could not get possession of the chattel without bringing an action to force the donee to give it back. Short of these things being done, the donee could not get possession without bringing an action against the donor to force him to give him the thing. But if we are to force him to give, it cannot be said that he has given. . . . I have come to the conclusion that in ordinary English language, and in legal effect, there cannot be a "gift" without a giving and taking. The giving and taking are the two contemporaneous reciprocal acts which constitute a "gift." They are a necessary part of the proposition that there has been a "gift." They are not evidence to prove that there has been a gift, but facts to be proved to constitute the proposition that there has been a gift.—LORD ESHER, M.R.

GIFT.

See Transfer of Stock into Joint Names.

GLEBE LANDS ACT, 1888.

To facilitate the sale of Glebe Lands.

GOOD TITLE.

See Vendor and Purchaser. 2.

GOOD-WILL.

See Vendor and Purchaser. 10.

GRANT.

See Licence, effect of.

GUARDIANSHIP OF INFANTS ACT, 1886.

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H.

HABEAS CORPUS.

1. ——

THE QUEEN *v.* BARNARDO, **23 Q. B. D. 315.** Notwithstanding an agreement between the mother and the defendant that a child should be placed under the defendant's charge for a certain period the parent would be the legal guardian of the child, and she is incapable of binding herself not to exercise her rights as such. She could therefore revoke the agreement at any moment as could any other guardian in a similar case.—LINDLEY, L.J.

2. —— **Appeal—Extra-judicial opinion.**

COX *v.* HAKES, **15 App. Cas. 525.** I have an indistinct misgiving whether in awarding or disposing of a writ of *habeas corpus* a judge of the High Court, or the High Court itself, is acting as a Court or judge of a Court of Judicature. There is no *lis*, there is no action; these proceedings are entitled *ex parte*.—LORD BRAMWELL.

527. It was always open to an applicant for it, if defeated in one Court, at once to renew his application to another. No Court was bound by the view taken by any other, or felt itself obliged to follow the law laid down by it. Each Court exercised its independent judgment upon the case, and determined for itself whether the return to the writ established that the detention of the applicant was in accordance with the law. A person detained in custody might thus proceed from Court to Court until he obtained his liberty. And if he could succeed in convincing any one of the tribunals competent to issue the writ that he was entitled to be discharged, his right to his liberty could not afterwards be called in question. There was no power in any Court to review or control the proceedings of the tribunal which discharged him.

535. That question (whether there would be an appeal from an order refusing to discharge an applicant) does not arise here, and any opinion expressed upon it would be extra-judicial. . . . There would be to my mind nothing surprising if it should turn out that an appeal lay by one whose discharge had been refused, but that there was no appeal against a discharge from custody. It would be in strict analogy to that which has long been the law. The discharge could never be reviewed or interfered with; the

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HABEAS CORPUS—*continued.*

refusal to discharge, on the other hand, was always open to review: and although this review was not, properly speaking, by way of appeal, its practical effect was precisely the same as if it had been.—LORD HERSCHELL.

HEIRLOOMS—Discretion of Court to allow Sale.

In re THE EARL OF RADNOR'S WILL TRUSTS, **45 Ch. D. 402.**

HIGHWAY—Dedication.

1. ——

SPEDDING *v.* FITZPATRICK, **38 Ch. D. 414.** Setting up a stile on a path would be evidence of dedication.—FRY, L.J.

2. —— **Footways, Maintenance and Repair of—Local Government Act, 1888—County Council.**

In re LOCAL BOARD OF WARMINSTER AND COUNCIL OF THE COUNTY OF WILTS, **25 Q. B. D. 459.** The County Council is liable for the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of the footpaths or footways on the sides of main roads, as parts of such main roads, and to make payments in respect thereof. I am of opinion that the County Council is also liable in respect of paved or pitched crossings over the main roads.—GRANTHAM, J.

463. The urban authority in this instance have chosen to exercise the power reserved to them under sub-s. 2 of s. 11, of claiming to retain the duty of maintaining and repairing the main roads, and, therefore, having done so, they are entitled to an annual payment or contribution from the County Council; and they have to perform the duties which otherwise the County Council would have to perform, and may demand of the County Council an annual payment to cover the cost of maintenance and repair, and reasonable improvement. I may add, with reference to question five, that if the alteration or substitution of flagging and paving for gravel is, under the circumstances, a reasonable improvement, undoubtedly that ought to be borne by the Council.—CHARLES, J.

3. —— **User, whether Permissive or of Right.**

BOURKE *v.* DAVIS, **44 Ch. D. 120.** I must treat the claim of the defendant, therefore, as if it were a claim to establish a right of highway on dry land. Now, in the case of such a claim, a very material consideration is, by whom has the roadway been metalled, repaired, and maintained in order. In a dispute as to the alleged right, the answer to this question may be decisive.

121. The nearest analogy in the case of a way claimed on dry

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HIGHWAY—*continued.*

land would be to suppose a track determined by an avenue of trees some miles long in the park or other land of a private owner, to which there was no public access save from a road crossing it at right angles, and to suppose that persons driving along that road had been accustomed, when they pleased, to turn into one or other part of this avenue and drive up and down it for pleasure. Would that user, however long continued, make that avenue a highway, or would the legal inference be that such use being merely for amusement had always been permissive, which, of course, could not grow into a right? When it is sought to establish a right by evidence of user, it is not enough to say that such a right might be the subject of an actual grant. . . . It does not follow, that, because a right may be granted—that is, because it is grantable by law—therefore it may be prescribed for.—LORD ST. LEONARDS, L.C.; KAY, J.

Another important fact is that the way claimed is not a way from one public place to another, speaking generally,—a public right of way means a right to the public of passing from one public place to another public place.—LORD CRANWORTH, L.C.; KAY, J.

HIRE AND PURCHASE AGREEMENT.

See Bill of Sale. 8.

HOUSING OF THE WORKING CLASSES ACT, 1890.

To consolidate and amend the Acts relating to Artizans' and Labourers' Dwellings and the Housing of the Working Classes.

HUSBAND AND WIFE—Equity to a Settlement.

1. ——

In re BRIANT. POULTER *v.* SHACKEL, **39 Ch. D. 475.** A legacy to a wife is at law a legacy to the husband; but in equity it is subject to a claim of the wife for a provision out of it, for herself and children.—KAY, J.

2. —— **Married Women's Property Act.**

BECK *v.* PIERCE, **23 Q. B. D. 321.** The liabilities of husband for wife's ante-nuptial debts:—

1st. He can now be sued without her, and whether she be alive or dead.

2nd. He can be sued with her, but in this case the judgments may be separate . . . the judgment may be a joint judgment against the husband personally, and against the wife as to her separate property.

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HUSBAND AND WIFE—*continued.*

3rd. The husband's liability is no longer unlimited as at Common Law.

4th. As between him and her he is entitled to be indemnified out of her separate property.—LINDLEY, L.J.

If sued alone, he cannot require his wife to be joined; if she is sued alone in respect of her separate estate, she cannot require her husband to be joined.—LINDLEY, L.J.

322. The Act apparently enables a wife to keep alive her liabilities . . . but such acts of hers do not, we apprehend, affect her husband. . . . On the other hand, similar acts by him will not affect her direct liability to her creditors.—LINDLEY, L.J.

3. —— **Married Women's Property Act, 1882.**

DRAYCOTT *v.* HARRISON, **17 Q. B. D. 153.** A married woman is no more capable of contracting and rendering herself liable upon contract in respect of her separate property, which is subject to a restraint upon anticipation, than she was before the Act of 1882 was passed.—A. L. SMITH, J.

4. —— **Married Women's Property Act, 1882.**

SEROKA *v.* KATTENBURG, **17 Q. B. D. 179.** The Married Women's Property Act, 1882, s. 1, sub-s. 2, does not discharge the husband from his old liability; it gives the plaintiff an option of suing husband and wife together or suing the wife alone.—MATHEW, J.

5. —— **Restraint upon Anticipation—Married Women's Property Act, 1882.**

JAY *v.* ROBINSON, **25 Q. B. D. 467.** Judgment for a sum of money was recovered against a married woman, who subsequently obtained a dissolution of her marriage and married again, and by settlement made by her on the second marriage, property belonging to her was settled to her separate use without power of anticipation. The judgment debt was held to be a "debt contracted before her marriage," within the meaning of s. 13; also it was a "debt contracted before marriage," within the meaning of s. 19, so that the restriction upon anticipation contained in the settlement had no validity against it.—LORD ESHER, M.R.; FRY, and LOPES, L. JJ.

6. —— **Separation Agreement—Reconciliation.**

NICOL *v.* NICOL, **31 Ch. D. 526.** Cohabitation and reconciliation put an end to all the effects of separation.—COTTON, L.J.

529. A renewal of cohabitation will put an end to all or any of the provisions of a separation deed, so far as the language of the deed, properly construed by the light of surrounding circum-

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HUSBAND AND WIFE—*continued*

stances, shews that its provisions were only intended to take effect whilst the separation lasted.—BOWEN, L.J.

7. —— **What agreements between, valid.**

McGREGOR *v.* McGREGOR, **21 Q. B. D. 430.** The doctrine of the wife's incapacity to contract is subject to the qualification that the husband and wife may bind themselves by an agreement to compromise certain proceedings which they may take against each other. It is true that the decisions on the subject have gone no further than matrimonial suits, but I do not see any reason for confining the principle to matrimonial suits. It seems to me logically, to extend to all proceedings which the husband and wife are by law capable of taking against each other.

431. It was argued that the agreement could not be binding because there was no trustee interposed. The trustee was interposed for the purpose of supplying a consideration when otherwise there would have been none. But where there is a valid consideration as between husband and wife there is no need of a trustee.—LINDLEY, L.J.

See Criminal Law. 5.

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I.

ILLEGAL CONDITION.

See Will. 2.

ILLEGAL CONTRACT—Partial Performance.

KEARLEY *v.* THOMSON, **24 Q. B. D. 745.** As a general rule, where the plaintiff cannot get at the money which he seeks to recover without shewing the illegal contract, he cannot succeed. In such a case the usual rule is "*potior est conditio possidentis.*" There is another general rule which may be thus stated, that where there is a voluntary payment of money it cannot be recovered back. It follows in the present case that the plaintiff who paid the £40 cannot recover it back without shewing the contract upon which it was paid, and when he shews that he shews an illegal contract. The general rule applicable to such a case is laid down in the very elaborate judgment in *Collins* v. *Blantern*, where the Lord Chief Justice says: "Whoever is a party to an unlawful contract, if he hath once paid the money stipulated to be paid in pursuance thereof, he shall not have the help of the Court to fetch it back again; you shall not have a right of action when you come into a Court of justice in this unclean manner to recover it back." To that general rule there are undoubtedly several exceptions, or apparent exceptions. One of those is the case of oppressor and oppressed, in which case usually the oppressed party may recover the money back from the oppressor. In that class of cases the *delictum* is not *par*, and therefore the maxim does not apply. Again, there are other illegalities which arise where a statute has been intended to protect a class of persons, and the person seeking to recover is a member of the protected class. Instances of that description are familiar in the case of contracts void for usury under the old statutes, and other instances are to be found in the books under other statutes, which are, I believe, now repealed, such as those directed against lottery keepers. In these cases of oppressor and oppressed, or of a class protected by statute, the one may recover from the other, notwithstanding that both have been parties to the illegal contract.—FRY, L.J.

ILLEGITIMATE CHILDREN.

In re BOLTON. BROWN *v.* BOLTON, **31 Ch. D. 546.** No gift however express, to unborn illegitimate children is allowed by law.—LORD CHELMSFORD, KAY, J.

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ILLEGITIMATE CHILDREN—*continued.*

553. A man cannot provide for the illegitimate children either of himself or of another man by any reference that involves an inquiry as to their paternity. The law allows no criterion of paternity but marriage.—BOWEN, L.J.

See Will. 5.

IMAGES.

See Ecclesiastical Law. 6.

IMPLIED WARRANTIES OR COVENANTS IN LAW.

THE MOORCOCK, **14 P. D. 68.** I believe if one were to take all the cases, and they are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have.—BOWEN, L.J.

IMPOTENCE.

See Divorce. 9.

INCLOSURE ACT—Right of Support—Right to work Minerals.

CONSETT WATERWORKS COMPANY *v.* RITSON, **22 Q. B. D. 321.** To entitle the lord to work so as to let down it must (1) either clearly appear by the deed, instrument, or Act, by which the minerals are severed from the surface that the surface-owner has parted with the right of support, or (2) there must be in it an absolute unqualified clause of compensation (p. 324).—A. L. SMITH, J.

322. The Act creates a different right in the lord over the inclosures from that which he previously possessed in relation to the wastes, and what that right is must be determined by the Act itself.—A. L. SMITH, J.

INCOME TAX.

1. —

CLERICAL, MEDICAL, AND GENERAL LIFE ASSURANCE SOCIETY *v.* CARTER, **22 Q. B. D. 450.** As to the chargeability of interest arising from investments made for the purposes of a business.

2. —

THE QUEEN *v.* COMMISSIONERS FOR SPECIAL PURPOSE OF THE INCOME TAX, **21 Q. B. D. 313.** As to time within which overpayment must be proved, so that repayment may be obtained.

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INCOME TAX—*continued.*

3. —— Annual Profits or Gains.

NEW YORK LIFE INSURANCE COMPANY *v.* STYLES, **14 App. Cas. 381.** No part of the premium income received under participating policies was liable to be assessed to income tax as profits or gains under Schedule D.—LORDS WATSON, BRAMWELL, HERSCHELL, and MACNAGHTEN.

4. —— Person resident in United Kingdom—Trade carried on abroad—Profits not remitted to the United Kingdom.

COLQUHOUN *v.* BROOKS, **14 App. Cas. 510.** The whole section points, to my mind, strongly to the conclusion that moneys received in this country arising from possessions or securities outside its limits were supposed to be the only portion of what I have termed foreign income which was taxable.—LORD HERSCHELL.

INCONSISTENT AND CONTRADICTORY LIMITATIONS.

CORBETT *v.* CORBETT, **13 P. D. 136.** [An estate in fee simple being given by a will, a provision for forfeiture in case of alienation is void, as inconsistent with the right of alienation.]

139. There is abundant authority for saying that if the devise to the respondent is that of an estate in fee simple the provision for forfeiture is void, as inconsistent with the right of alienation which is one of the incidents the law attaches to such an estate.—BUTT, J.

INFANT.

1. —— Apprenticeship Deed—Covenant to serve.

DE FRANCESCO *v.* BARNUM, **43 Ch. D. 172.** Ever since the time of Charles I. it has been established that you cannot sue an infant even upon the covenants which he purports to enter into during his infancy in an apprenticeship deed.—CHITTY, J.

2. —— Contract.

VALENTINI *v.* CANALI, **24 Q. B. D. 167.** When an infant has paid for something and has consumed or used it, it is contrary to natural justice that he should recover back the money which he has paid.—LORD COLERIDGE, C.J.

3. —— Married Women—Ward of Court—Post-nuptial Settlement—Jurisdiction of Court.

SEATON *v.* SEATON, **13 App. Cas. 71.** The Court has no power to order a ward to execute a settlement (though it can order the husband to do so).—LORD HERSCHELL.

The settlement was perfectly valid, effectual, and binding, so as to prevent Charles Seaton from acquiring the absolute rights

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INFANT—*continued.*

which would otherwise have been his owing to the marriage. But what is contended is this, that the settlement had, as regards Louis Christian Seaton, the effect of disposing of property which she could not in point of law have made an effectual disposition of, but for the fact that the Court sanctioned this form of conveyance. I am at a loss to understand what authority the Court of Chancery possesses to make a disposition effectual which in law is not and cannot be made effectual at the time at which the Court so sanctioned the disposition.—LORD HERSCHELL.

4. —— **Necessaries.**

JOHNSTONE *v.* MARKS, **19 Q. B. D. 511.** The plaintiff must prove that the goods supplied when supplied were necessaries to an infant.—LORD ESHER, M.R.

See Next Friend.

Guardianship of Infants Act.

INFECTIOUS DISEASE (NOTIFICATION) ACT, 1889.

INFECTIOUS DISEASE (PREVENTION) ACT, 1890.

INJUNCTION.

1. ——

WIMBLEDON LOCAL BOARD *v.* CROYDON RURAL SANITARY AUTHORITY, **32 Ch. D. 428.** This Court never will flinch from ordering work to be undone, if it has been forced on pending an appeal or pending a motion for injunction.—LINDLEY, L.J.

2. ——

CHALLENDER *v.* ROYLE, **36 Ch. D. 436.** Injunctions ought to be granted only on a case made out entitling the plaintiff to that particular remedy.—COTTON, L.J.

443. Those who apply for an interim injunction should fulfil the ordinary requirements of the law and make out a *primâ facie* case, not merely a *primâ facie* case of balance of convenience and inconvenience, but a *primâ facie* case of a right which is infringed. BOWEN, L.J.

3. —— **Air.**

HARRIS *v.* DE PINNA, **33 Ch. D. 250.** In no case has any injunction been granted to restrain interference with the access of air.—CHITTY, J.

4. —— **Imitation of Plaintiffs' Goods—Form of Account.**

LEVER *v.* GOODWIN, **36 Ch. D. 5.** There may be no monopoly at all in the individual things, but if they are so combined by the

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INJUNCTION—*continued.*

defendants as to pass off the defendants' goods as the plaintiffs', then the defendants have brought themselves within the old common law doctrine in respect of which equity will give to the aggrieved party an injunction in order to restrain the defendants from passing off their goods as those of the plaintiffs. . . . Both in trade-mark cases and patent cases, the plaintiff is entitled, if he succeeds in getting an injunction, to take either of two forms of relief; he may either say, "I claim from you the damage I have sustained from your wrongful act," or, "I claim from you the profit which you have made by your wrongful act."—COTTON, L.J.

5. —— **Injury.**

REINHARDT *v.* MENTASTI, **42 Ch. D. 686.** The principle applied is that a man must not use his own so as to injure his neighbour, and, in substance, the only question discussed in any given case is, whether that principle is applicable to the particular circumstances there occurring. Here there is really no dispute about the material facts.—KEKEWICH, J.

688. What makes life less comfortable and causes sensible discomfort and annoyance is a proper subject of injunction.—LORD BRAMWELL, KEKEWICH, J.

689. The law is this, that a man is entitled to the comfortable enjoyment of his dwelling-house. If his neighbour make such a noise as to interfere with the ordinary use and enjoyment of his dwelling-house, so as to cause serious annoyance and disturbance, the occupier of the dwelling-house is entitled to be protected from it.—KNIGHT BRUCE, L.J.; KEKEWICH, J.

690. The application of the principle governing the jurisdiction of the Court in cases of nuisance does not depend on the question whether the defendant is using his own reasonably or otherwise. The real question is, does he injure his neighbour?—KEKEWICH, J.

INJURY.

See Injunction. 5.

INN—Licence—Renewal.

SHARPE *v.* WAKEFIELD, **21 Q. B. D. 79.** A licence is in all cases a personal one; and the phrase "licensed premises" is, taken by itself, inaccurate and misleading.—WILLS, J. [*see* 1891, A. C. 173].

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INNS OF CHANCERY.

See Charity. 2.

INSPECTION OF DOCUMENTS.

DADSWELL *v.* JACOBS, **34 Ch. D. 282.** If the particular agent appointed to inspect attempted to use the knowledge he obtained by that inspection for any purpose other than the purposes of the action, he would be guilty of contempt, and on proper application the Court would punish him.—COTTON, L.J.

INSURANCE AGAINST ACCIDENT—Risks excepted—Construction.

CORNISH *v.* THE ACCIDENT INSURANCE COMPANY, **23 Q. B. D. 457.** The risk was obvious as being evident to his senses (*i.e.*, if he had made use of them at the time).—BOWEN, L.J.

INSURANCE, FIRE—Claim by postponed Bond-holder for loss after payment of a sufficient sum to reinstate has been made to prior Bond-holders by other Insurers.

WESTMINSTER FIRE OFFICE *v.* GLASGOW PROVIDENT INVESTMENT SOCIETY, **13 App. Cas. 715.** The reasoning of the learned judges who constituted the minority of the Court of Session depends upon two propositions which are, in my opinion, equally fallacious. One of these is, that separate fire policies, covering the same subjects, effected without privity by independent incumbrancers, for the protection of their several interests, must all be treated as if they had been effected by the owner of the subjects, if he is made a party to each policy in respect of his right of reversion only, and undertakes to pay the premiums of insurance. The other is, that payment to a first incumbrancer of a sum which does not represent the difference between the insurable value of the subjects and their value after deterioration by fire, but is sufficient to reinstate them, must necessarily be regarded as full indemnity to a postponed incumbrancer, in any question with his own insurers, although the sum so paid is pocketed by the assured, and is not expended on reinstatement.—LORD WATSON.

INSURANCE, LIFE—Payment of Premiums by person not Beneficial Owner—Lien.

In re EARL OF WINCHILSEA'S POLICY TRUSTS, **39 Ch. D. 172.** The principles enunciated by Lord Justice Fry in *In re Leslie* were in substance adopted by the Court of Appeal in *Falcke* v. *Scottish Imperial Insurance Company*, and I think the Court intended to lay down exhaustively all the cases in which a person, not the sole beneficial owner of a policy, who pays a premium in respect of it, is entitled to a lien upon the proceeds of the policy for the amount which he has paid.—NORTH, J.

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INSURANCE, MARINE.

1. —— **Average or Average loss; (1) Particular Average; (2) General Average discussed and defined.**

PRICE & CO. *v.* THE A 1 SHIPS' SMALL DAMAGE ASSOCIATION, LIMITED, **22 Q. B. D. 584.** "Average" is clearly a technical expression, and it has a well-established mercantile signification. It means a partial as distinguished from a total loss. . . . A general average loss is a loss voluntarily occasioned for the safety and benefit of the common enterprise. . . . The expense of putting into the port of Norfolk was a general average loss. The cost of the repairs to the ship was particular average on ship. —LORD ESHER, M.R.

589. The ship sustained damage in a storm, which was a particular average loss. The captain caused parts of the rigging and sails to be cut away, with a view to the safety of the general enterprise. That clearly was a sacrifice for the benefit of the common undertaking, and, therefore, was what is called a general average loss, giving rise to a general average contribution. . . . Though both are called "average," they are essentially different things; the one being a partial injury to the ship by the elements, falling on the ship itself, the other being a sacrifice made voluntarily in the interests of the common undertaking.—FRY, L.J.

2. —— **Collision—Adjustment of Damages.**

LONDON STEAMSHIP OWNERS' INSURANCE CO. *v.* GRAMPIAN STEAMSHIP CO., **24 Q. B. D. 32.**

3. —— **Concealment.**

BLACKBURN *v.* VIGORS, **17 Q. B. D. 562.** The true doctrine is that the freedom from misrepresentation or concealment (whether fraudulent or through mistake) is a condition precedent, an implied condition of the contract of insurance, so as to enable the assured to insist on its performance.—LORD ESHER, M.R.

582. The insurer is entitled to assume, as the *basis* of the contract between him and the assured, that the latter will communicate to him every material fact of which the assured has, or in the *ordinary course of business ought* to have, knowledge, and that the latter will take the necessary measures by the employment of competent and honest agents to obtain through the ordinary channels of intelligence in use in the mercantile world, all due information as to the subject-matter of the insurance.—COCKBURN, C.J.

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INSURANCE, MARINE—*continued.*

4. —— **Insurance of Freight—Unseaworthiness of Ship—"Innocent Shippers."**

BROOKING *v.* MAUDSLAY, SON & FIELD, **38 Ch. D. 642.** The unseaworthiness of the *Elephant* constitutes a good defence to any action at law on the policy. . . . It is the practice of underwriters, who may have a good defence to an action on a policy founded on the unseaworthiness of a vessel, to pay insurers who are "innocent shippers."—STIRLING, J.

5. —— **"Open Cover."**

BHUGWANDASS *v.* NETHERLANDS INDIA SEA AND FIRE INSURANCE COMPANY OF BATAVIA, **14 App. Cas. 92.** An "open cover" is issued generally before the shipment of the goods to be insured.

6. —— **"Perils of the seas and all other perils."**

THAMES AND MERSEY MARINE INSURANCE COMPANY *v.* HAMILTON, FRASER & CO., **12 App. Cas. 491.** The subject-matter, marine risks, limits the meaning of the general words.—LORD HALSBURY. L.C.

492. I have thought that the following definition might suffice:—"All perils, losses and misfortunes of a character incident to a ship as such."—LORD BRAMWELL.

7. —— **Proximate cause of loss.**

PINK *v.* FLEMING, **25 Q. B. D. 397.** In cases of marine insurance the liability of the underwriters depends upon the proximate cause of the loss. In the case of an action for damages on an ordinary contract, the defendant may be liable for damage, of which the breach is an efficient cause or *causa causans;* but in cases of marine insurance only the *causa proxima* can be regarded. This question can only arise where there is a succession of causes, which must have existed in order to produce the result. Where that is the case, according to the law of marine insurance, the last cause only must be looked to and the others rejected, although the result would not have been produced without them. —LORD ESHER, M.R.

INTEREST.

See Disqualification.
Judicial Inquiry.

INTEREST—Bill of Costs.

See Solicitor. 2.

INTERPLEADER—Shares—Chose in action—Chattels.

ROBINSON *v.* JENKINS, **24 Q. B. D. 279.** The first rule of Order LVII. (which relates to interpleader) gives relief not only in

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INTERPLEADER—*continued.*

respect of any debt, money, or goods, but also in respect of chattels. This is one of the widest words known to the law in its relation to personal property.—FRY, L.J.

INTERROGATORIES.

1. ——

MARTIN *v.* SPICER, **32 Ch. D. 595.** The party applying for leave states the nature of the interrogatories *en bloc*: if the Judge finds they are, generally speaking, relevant, it is not his duty, nor is it within his power, to refuse leave to deliver them. So it is not the duty of the Chief Clerk in the first instance to decide whether under rules 6 and 7 the interrogatories have exceeded the bounds laid down by those rules. In my opinion the plaintiff should simply ask for leave to deliver interrogatories, and in so doing should state—I do not say in writing—for the information and sanction of the Court what are the subjects upon which he desires to interrogate.—BACON, V.-C.

2. —— **Sufficiency of answer—Objections to answering.**

PARNELL *v.* WALTER, **24 Q. B. D. 444.** We decline to answer the remainder of the interrogatories on the ground that they are irrelevant and not material to any matters in question in this action, and that the object of the plaintiff in administering these interrogatories is to discover the evidence we propose to adduce in support of our case, and that the interrogatories are unreasonable, unnecessary, and vexatious, and are not put *bonâ fide* for purposes of this action, but for the purpose of criminating third parties who are not parties to this action, and that the matters inquired into relate solely to the defendant's case. [Pleading.]

449. The moment it appears that questions are asked and answers insisted upon in order to enable the party to see if he can find a case, either of complaint or defence, of which at present he knows nothing, and which will be a different case from that which he now makes, the rule against fishing interrogatories applies.—LORD ESHER, M.R.

See Discovery. 3.

INTESTATES' ESTATES ACT, 1890.

To amend the law by making better provision for the widows of certain intestates in the distribution of such intestates' property.

INTIMIDATION.

See Conspiracy. 2.

INVESTMENT.

See Trust. 1.

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J.

JETTISON.

See Ship. 14.
Ship. 15.

JOINT AND SEVERAL CONTRACT.

See Contract. 3.
Partnership Debt.

JUDGE'S NOTES.

See Appeal. 6.
County Court. 2.

JUDGMENT.

See Appeal. 8.

JUDICATURE ACT, 1873, s. 19.

Cox *v.* Hakes, **15 App. Cas. 526.** I think the proper way of dealing with sect. 19 and sect. 18, is to consider their object to be to establish a Court of Appeal, not to make things appealable of a character not appealable before.—Lord Bramwell.

JUDICIAL ACT.

See Local Government.
Metropolis.

JUDICIAL DISCRETION.

See Salvage. 2.

JUDICIAL FUNCTION—Ministerial Act.

Partridge *v.* General Council of Medical Education and Registration of the United Kingdom, **25 Q. B. D. 96.** It appears to me that it is a true proposition to say that, when a public duty is imposed by Act of Parliament upon a body of persons, which duty consists in the exercise of a discretion, it cannot be said that the exercise of that discretion is a merely ministerial act. If what the defendants did cannot be considered to have been merely ministerial, then I think, for the purposes of the question, whether they are protected from an action, it must be considered as judicial. It appears to me that a body such as the defendants can only be made subject to an action for things which they have done erroneously without malice in carrying out their duties under the Act, if it can be shewn that they were acting merely ministerially. It is not necessary to go

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JUDICIAL FUNCTION—*continued.*

through the cases that have been cited on the subject. They seem to me all to shew that such an action as this cannot be maintained except where the duty intended to be exercised is only ministerial.—LORD ESHER, M.R.

JUDICIAL INQUIRY—Medical Act, 1858.

LEESON *v.* GENERAL COUNCIL OF MEDICAL EDUCATION AND REGISTRATION, **43 Ch. D. 383.** The only thing which the Courts can investigate when proceedings of the General Medical Council of this character are brought before them, is whether the domestic forum has acted honestly within its jurisdiction. The jurisdiction is defined by the statute. There must be an allegation before the General Medical Council of infamous conduct in some professional respect, and adjudication must be arrived at after due inquiry. The statute says nothing more, but in saying so much it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard.—BOWEN, L.J.

384. If, indeed, it could be shewn that nothing was brought before the tribunal which could raise in the minds of honest persons the inference that infamous conduct had been established, that would go to shew that the inquiry had not been a due inquiry; but if there is no blot of that kind upon the proceedings, the jurisdiction of the domestic tribunal, which has been clothed by the Legislature with the duty of discipline in respect of a great profession, must be left untouched by Courts of Law. . . . As the Lord Justice has said, nothing can be clearer than the principle of law that a person who has a judicial duty to perform disqualifies himself for performing it if he has a pecuniary interest in the decision which he is about to give, or a bias which renders him otherwise than an impartial judge. If he is an accuser he must not be a judge. If he has a pecuniary interest in the success of the accusation he must not be a judge.—BOWEN, L.J.

JUDICIAL SEPARATION—Cruelty.

MYTTON *v.* MYTTON, **11 P. D. 143.** If the conduct of the husband be such as to endanger the life, or even the health, of the wife, that is cruelty in every sense of the word.—BUTT, J.

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JURISDICTION.

1. ——

LYNCH *v.* COMMISSIONERS OF SEWERS OF THE CITY OF LONDON, **32 Ch. D. 89.** The Commissioners could not clothe themselves with jurisdiction to take a man's property by only thinking that which it was unreasonable for any sensible man to think.—BOWEN, L.J.

2. —— **Order.**

In re SUFFIELD AND WATTS. *Ex parte* BROWN, **20 Q. B. D. 698.** When once an order of a judge of the High Court has been drawn up and perfected, the Judge has no jurisdiction to vary or discharge it.—LOPES, L.J.

See Costs. 1.

JURISDICTION OF COURT

See Infant. 3.

JURY, ATTEMPT TO PREJUDICE.

See Appeal. 4.

JUS TERTII—Bailee.

ROGERS & Co. *v.* LAMBERT & Co., **24 Q. B. D. 576.** A bailee is estopped from disputing his bailor's title unless he claims to defend under the authority of the party in whom he alleged the title to be.—DENMAN, J.

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L.

LAND CHARGES REGISTRATION AND SEARCHES ACT, 1888.

LAND CLAUSES CONSOLIDATION ACT, 1845.

1. —— **Compensation—Land injuriously affected—Damages, measure of.**

In re LONDON, TILBURY, AND SOUTHEND RAILWAY COMPANY AND TRUSTEES OF GOWER'S WALK SCHOOLS, **24 Q. B. D. 329.** Where a plaintiff has a cause of action for a wrongful act of the defendant, the plaintiff is entitled to recover for all the damage caused which was the direct consequence of the wrongful act, and so probable a consequence that, if the defendant had considered the matter, he must have foreseen that the whole damage would result from that act. If that be so, and a person puts up buildings, the inevitable consequence of their erection being to obstruct ancient and modern lights, should he not be taken to have foreseen that in obstructing the one he would obstruct the other? If that were proved in a common law action the plaintiff would be entitled to damages for the whole of the consequences of the wrongful act of obstructing ancient lights, which would include damage to the new as much as to the old lights.—LORD ESHER, M.R.

2. —— **Costs.**

In re BROOSHOOFT'S SETTLEMENT, **42 Ch. D. 253.** The company must take the land subject to the possibility that in ordinary events the owner of the property may deal with it, or the proceeds of it, by way of settlement, and if that increases the cost of payment out of Court, or of any order of the Court concerning the money, the persons who are most properly charged with those costs are the railway company, and not the man who has dealt with his own property . . . There are decisions both ways . . . I should say again, I do not see why the company ought not to pay the costs both of mortgagor and mortgagee. When they take a man's land compulsorily, they know there is always a chance of his dealing with it so as to increase the cost of getting the money paid out.—KAY, J.

3. —— **Land injuriously affected—Compensation, measure of.**

In re LONDON, TILBURY, AND SOUTHEND RAILWAY COMPANY, AND TRUSTEES OF GOWER'S WALK SCHOOLS, **24 Q. B. D. 44.** The

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LAND CLAUSES CONSOLIDATION ACT, 1845—*continued.*

principle is recognised that when once a legal right of a claimant has been interfered with by the exercise of the powers conferred on the company, whether the right so interfered with was a right to the possession of land or a right to an easement, all the damage done to him as the consequence of that interference is the subject of compensation.—MATHEW, J.

The authorities, which run in a clear and even channel, establish beyond dispute that the word "damage" means the real loss which the claimant has sustained by reason of the construction of some work which could not have been constructed without the statutory authority, and is not limited to the damage which would be recoverable against a person constructing a similar work without statutory powers.—WILLS, J.

4. —— **Lands injuriously affected during the execution of the works—Arbitration—Compensation.**

FORD *v.* METROPOLITAN AND METROPOLITAN DISTRICT RAILWAY COMPANIES, **17 Q. B. D. 19.** If the Court can see that an arbitrator has given compensation in respect of any part of the claim which is beyond his jurisdiction, judgment must be given against the plaintiffs, and the award must be treated as invalid. I regret that the Court cannot give judgment for that which is valid and good.—LORD ESHER, M.R.

27. Where by the construction of works there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property, and which right gives an additional market value to such property, apart from the uses to which any particular owner or occupier might put it, there is a title to compensation if, by reason of such interference, the property, as a property, is lessened in value.—THESIGER and BOWEN, L.JJ.

LANDLORD AND TENANT.

1. ——

CASEY *v.* HELLYER, **17 Q. B. D. 97.** In an action for the recovery of land, the writ of summons can be specially indorsed only when the plaintiff was party to the lease or agreement under which the hereditaments have been held, or when the defendant has paid rent to the plaintiff, thereby acknowledging his title, or when the defendant is otherwise estopped from denying the plaintiff's title.

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LANDLORD AND TENANT—*continued.*

2. —— Assignment.

BAYNTON *v.* MORGAN, **21 Q. B. D. 105.** I do not see how the receipt of rent by a lessor from an assignee of a lessee can get rid of the lessee's positive personal covenant to pay rent.—A. L. SMITH, J.

3. —— Assignee.

BAYNTON *v.* MORGAN, **22 Q. B. D. 79.** It has been held that a surrender by the lessee himself of part of the demised property does not have the effect of putting an end to the term. That being so, it seems to me clearly to follow that a surrender of part by an assignee to whom the lessee has given authority to do that which he himself could have done, cannot have that effect.—LORD ESHER, M.R.

82. The rule of law is that a lessee remains liable upon his express covenants, notwithstanding an assignment and acceptance by the landlord of rent from the assignee, and there is an implied promise on the part of each successive assignee to indemnify the lessee against breaches of the covenants of the lease in his own time.—LOPES, L.J.

4. —— "Good Tenantable Repair".

PROUDFOOT *v.* HART, **25 Q. B. D. 50.** I am of opinion that under a contract to keep the premises in tenantable repair, and leave them in tenantable repair, the obligation of the tenant, if the premises are not in tenantable repair when the tenancy begins, is to put them into, keep them in, and deliver them up in tenantable repair. Now, what is "tenantable repair"? Definitions have been given at different times by the Courts.

52. "Good tenantable repair" is such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it.

53. Take a house in Grosvenor Square. If when the tenancy ends, the paper on the walls is merely in a worse condition than when the tenant went in, I think the mere fact of its being in a worse condition does not impose upon the tenant any obligation to re-paper under the covenant, if it is in such a condition that a reasonably-minded tenant of the class who take houses in Grosvenor Square would not think the house unfit for his occupation. But suppose that the damp has caused the paper to peel off the walls, and it is lying upon the floor, so that such a tenant

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LANDLORD AND TENANT—*continued.*

should think it a disgrace, I should say then that the tenant was bound, under his covenant to leave the premises in tenantable repair, to put up new paper. He need not put up paper of a similar kind—which I take to mean of equal value—to the paper which was on the walls when his tenancy began. He need not put up a paper of a richer character than would satisfy a reasonable man within the definition. . . . As to whitewashing, one knows it is impossible to keep ceilings in the same condition as when they have just been whitewashed. But if, though the ceilings have become blacker, they are still in such a condition that a reasonable man would not say, "I will not take this house because of the state of the ceilings," then I think that the tenant is not bound, under his covenant to leave the house in tenantable repair, to whitewash them. . . . As to the floor, it may have been rotten when the tenancy began. If it was in such a state when the tenancy began that no reasonable man would take the house with a floor in that state, then the tenant's obligation is to put the floor into tenantable repair. The question is, what is the state of the floor when the tenant is called upon to fulfil his covenant? If it has become perfectly rotten he must put down a new floor, but if he can make it good in the sense in which I have spoken of all the other things—the paper, the paint, the whitewashing—he is not bound to put down a new floor. He may satisfy his obligation under the covenant by repairing it. If he leaves the floor out of repair when the tenancy ends, and the landlord comes in, the landlord may do the repairs himself and charge the costs as damages against the tenant, but he is only entitled to charge him with the necessary cost of a floor which would satisfy a reasonable man taking the premises. If the landlord puts down a new floor of a different kind, he cannot charge the tenant with the cost of it. He is entitled to charge the cost of doing what the tenant had to do under his covenant, but he is not entitled to charge according to what he has himself in fact done.—LORD ESHER, M.R.

5. —— **Implied agreement for quiet enjoyment.**

ROBINSON *v.* KILVERT, **41 Ch. D. 97.** If a tenant wants extraordinary protection for a particular branch of trade he must bargain for it in his lease.—LINDLEY, L.J.

As to the contention that the landlords have broken an implied agreement not to do anything which will make the property

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LANDLORD AND TENANT—*continued.*

unfit for the purpose for which it was let, we must look to what the landlords, at the time of letting, knew as to the purpose for which the demised property was to be used.—LOPES, L.J.

6. —— **Licence.**

OSBORNE *v.* MORGAN, **13 App. Cas. 235.** The right to interfere with the possession of a tenant under a formal lease, independently of the lessor, and in derogation of his rights, is not one of the natural incidents of a mere licence, which carries no legal or equitable interest in the soil.—LORD WATSON.

7. —— **Removal of Goods to prevent Distress—Action for Double Value.**

TOMLINSON *v.* CONSOLIDATED CREDIT AND MORTGAGE CORPORATION, **24 Q. B. D. 138.** If a tenant fraudulently or clandestinely removes his goods with the view of preventing a distress, his landlord may within thirty days follow and distrain the goods for rent due, and may recover against all persons offending double the value of the goods so removed.—LORD ESHER, M.R.

8. —— **Repudiation of Contract—Consequent Rights of Parties.**

JOHNSTONE *v.* MILLING, **16 Q. B. D. 474.** It has been decided that a tenant could not throw up his tenancy on the breach of a stipulation that the landlord should put the premises in repair.—BOWEN, L.J.

9. —— **Water-rate.**

BADCOCK *v.* HUNT, **22 Q. B. D. 148.** I do not think that a charge to which a person can only be made liable with his own consent can be said to be imposed upon him within the meaning of the covenant by the lessor, to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the Corporation of the City of London or otherwise howsoever.—LORD ESHER, M.R.

See Easement.

Lessor and Lessee.

LARCENY.

See Criminal Law. 6.

LAW.

1. ——

FORD *v.* METROPOLITAN AND METROPOLITAN DISTRICT RAILWAY COMPANIES, **17 Q. B. D. 20.** I cannot believe that a fine-drawn distinction which seems to me unreasonable can be the law.—LORD ESHER, M.R.

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LAW—*continued.*

2. —— **Equity.**

In re GARNETT. GANDY *v.* MACAULAY, **31 Ch. D. 9.** What is ridiculous and absurd never is, to my mind, to be adopted either in Law or in Equity.—LORD ESHER, M.R.

LAW OF DISTRESS AMENDMENT ACT, 1888.

LAW OF LIBEL AMENDMENT ACT, 1888.

LEASE.

See Executor. 3.

LECTURES.

See Copyright. 4.

LEGAL MAXIMS.

See Legal Terms and Maxims.

LEGAL TERMS AND MAXIMS.

Ab inconvenienti, arguments, **11 App. Cas. 626.**—LORD HOBHOUSE.

Actio personalis moritur cum personâ, **20 Q. B. D. 502.**—LORD ESHER.

40 Ch. D. 553.—COTTON, L.J. (Discussed.)

Actus non facit reum, nisi mens sit rea, **23 Q. B. D. 172.**—WILLS, J. (see Mens rea).

Ad medium filum, **33 Ch. D. 145.**—COTTON, L.J.

Autrefois acquit, plea of, **11 P. D. 57.**—LORD PENZANCE.

Brevi manu, **33 Ch. D. 119.**—PEARSON, J.

33 Ch. D. 283.—COTTON, L.J.

Casus omissus, **19 Q. B. D. 137.**—FRY, L.J.

Causa causans—the real effective cause, **17 Q. B. D. 674.**—LORD ESHER, M.R.

Causa proxima—the immediate cause, **17 Q. B. D. 674.**—LORD ESHER, M.R.

Causa remota—the effective, or efficient, or moving cause, **17 Q. B. D. 674.**—LORD ESHER, M.R.

Cessante ratione cessat lex, **18 Q. B. D. 255.**—LOPES, L.J.

Communis error facit jus, **12 App. Cas. 345.**—LORD WATSON.

Dans locum contractui, **34 Ch. D. 6.**

Ei qui affirmat non ei qui negat incumbit probatio, **12 App. Cas. 45.**—LORD HALSBURY, L.C.

Evidentia rei, **11 App. Cas. 236.**—LORD SELBORNE.

Ex abundanti cautelâ, **33 Ch. D. 149.**—COTTON, L.J.

Ex majori cautelâ, **20 Q. B. D. 476.**

Ex mero motu, **38 Ch. D. 74.**—COTTON, L.J.

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LEGAL TERMS AND MAXIMS—*continued.*

Expressio eorum quæ tacite insunt nihil operatur, **12 App. Cas. 16.**—Lord Halsbury, L.C.

33 Ch. D. 538.—Kay, J.

Expressio unius est exclusio alterius, **16 Q. B. D. 753.**—Hawkins, J.

21 Q. B. D. 65.—Lopes, L.J.

Falsa demonstratio non nocet, **31 Ch. D. 320.**—Chitty, J.

Fixatur solo, solo cedit, **33 Ch. D. 567.**—Chitty, J.

Fieri non debuit, factum valet, **36 Ch. D. 319.**—Stirling, J.

General.

(1.) A man is taken to intend the natural consequence of what he does, **17 Q. B. D. 299 and 557.**—Lord Esher, M.R.

(2.) A man is to be taken to know that which he wilfully abstains from knowing, or against which he wilfully shuts his eyes, **17 Q. B. D. 557.**—Lord Esher, M.R.

(3.) A man who states that which is in fact untrue, reckless, whether it is true or false, is to be taken to be malicious, **17 Q. B. D. 558.**—Lord Esher, M.R.

Generalia specialibus non derogant, **38 Ch. D. 56.**—Bowen, L.J.

Id certum est quod certum reddi potest, **38 Ch. D. 133.**—Bowen, L.J.

In gremio legis, **31 Ch. D. 502.**—Pearson, J.

In pari delicto potior est conditio defendentis, **12 App. Cas. 45.**—Lord Halsbury, L.C.

In pari materiâ, **34 Ch. D. 39.**—Bowen, L.J.

Inopes consilii, **12 P. D. 125.**—Butt, J.

Interest reipublicæ ut sit finis litium, **11 App. Cas. 664.**—Lord Watson.

Lex non favet delicatorum votis, **11 App. Cas. 694.**—Lord Bramwell.

Mala praxis, **22 Q. B. D. 534.**—Fry, L.J.

Malum prohibitum et malum in se, **39 Ch. D. 122.**—Kay, J.

Mens rea (Discussed), **23 Q. B. D. 185.**—Stephen, J.

Nemo debet bis vexari, **19 Q. B. D. 232.**—Field, J.

Nemo est heres viventis, **45 Ch. D. 63.**—Kay, J.

Non est reus, nisi mens sit rea, **23 Q. B. D. 185.**—Stephen, J.

Obiter dicendo, **17 Q. B. D. 597.**—Bowen, L.J.

38 Ch. D. 71.—Bowen, L.J. (*see* Obiter dicta. 5).

Omnia presumuntur rite esse acta, **31 Ch. D. 408.**—Chitty, J.

14 P. D. 48.—Butt, J.

15 P. D. 179.—Lindley, L.J.

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LEGAL TERMS AND MAXIMS—*continued.*

Omnis ratihabitio retrotrahitur et mandato equiparatur, **41 Ch. D. 304.**—BARON MARTIN.

Omnis nova constitutio futuris formam imponere debet non præteritis, **31 Ch. D. 408.**—BOWEN, L.J.

Particeps criminis, **12 P. D. 76.**—LORD ESHER, M.R.

Per incuriam, **33 Ch. D. 104.**—COTTON, L.J.
40 Ch. D. 296.—LINDLEY, L.J.

Portior est conditio defendentis, **17 Q. B. D. 552.**—WILLS, J.

Præsumitur pro negante, **16 Q. B. D. 226.**—LORD COLERIDGE, C.J.

Præsumptio juris et de jure, **12 P. D. 180.**—BUTT, J.

Quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest, **15 App. Cas. 540.**—LORD MORRIS.

Qui facit per alium facit per se, **32 Ch. D. 341.**—BOWEN, L.J.

Qui hæret in literâ hæret in cortice, **17 Q. B. D. 186.**—MANISTY, J.
21 Q. B. D. 36.—WILLS, J.

Qui prior est tempore, potior est jure, **32 Ch. D. 178.**

Quia timet, **11 P. D. 13.**—SIR J. HANNEN.

Quicquid plantatur solo, solo cedit, **33 Ch. D. 564.**

Res integra, **12 App. Cas. 267.**—LORD HALSBURY, L.C.

Res judicata—'Transit in rem judicatam,' **19 Q. B. D. 232.**—FIELD, J.

Res nova, **19 Q. B. D. 142.**—DAY, J.

Restitutio in integrum, **13 P. D. 200.**—BOWEN, L.J.

Secundum subjectam materiem, **31 Ch. D. 40.**—BOWEN, L.J.

Sic utere tuo ut alienum non lædas, **18 Q. B. D. 695.**—BOWEN, L.J.

Spes successionis, **45 Ch. D. 55.**—KAY J.

Strictissimi juris, **17 Q. B. D. 597.**—BOWEN, L.J.

Superflua non nocent, **17 Q. B. D. 270.**—BOWEN, L.J.

Tabula in naufragio, **12 App. Cas. 307.**—LORD WATSON.

Uberrima fides, **17 Q. B. D. 565.**—LORD ESHER, M.R.

Uno flatu, **34 Ch. D. 115.**—BOWEN, L.J.
14 App. Cas. 627.—EARL SELBORNE.

Volenti non fit injuria, **18 Q. B. D. 695.**—BOWEN, L.J. (*see* Master and Servant. 6).
14 App. Cas. 187.—LORD BRAMWELL.

LEGATEES.

See Annuitants.

LEGITIMACY.

1. —— **Paternity—Evidence.**

THE AYLESFORD PEERAGE, **11 App. Cas. 6.** What passed at an inter-

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LEGITIMACY—*continued.*

view of this kind between the wife and her mother-in-law may be important, and enable us to appreciate the bearing of her conduct. It may be that when we hear what was said we ought not to attend to some parts of it, perhaps not to any part. But I do not think you can stop the question.—EARL OF SELBORNE.

8. These letters ought to be read. The authorities which have been referred to I assume to be still in force, that is to say, that you could not put into the witness box Lady Aylesford, or if he were still living Lord Aylesford, for the purpose of proving who the real father of the child was. But it by no means follows that you cannot prove acts and conduct of the one or the other tending, as part of a series of *res gestæ*, to throw light upon and to lead to a just conclusion upon a question on which they could not directly be permitted to give evidence.—EARL OF SELBORNE.

9. It is said that a declaration bearing directly upon the point if occurring in such a letter, ought not to be received. I agree that it should not be received as direct evidence of the fact.—EARL OF SELBORNE.

10. Those declarations are not in themselves evidence of the fact one way or the other. But I cannot hold that a letter otherwise admissible which is an important act of conduct done by the mother, is to be excluded in whole or in part (if it were possible to divide one part from the other), because it may contain such declarations. These declarations are facts as well as statements. It is a fact that for some purpose or other the mother wrote a letter containing such statements at such a time. Your Lordships will not take them as proving the fact; but the fact that the mother did write such a letter, at such a time and for such a purpose, ought not to be excluded from consideration.—EARL OF SELBORNE.

11. As mere declarations by Lady Aylesford, of course the letters would not be admissible; they are only admissible as part of the conduct—part of the *res gestæ*—LORD BRAMWELL.

17. I cannot think that any presumption arises that Lord Aylesford had cohabitation with her. It seems to me that to say that such a presumption arises from the mere continuance of the non-dissolution, to call it so, of the matrimonial tie, under such circumstances would be putting a presumption of law very, very contrary to that of common sense; and I do not think that any authority goes so far as to say that there should be such a presumption . . .

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LEGITIMACY—*continued.*

Morris v. *Davies* decides that such a presumption can be rebutted; and it also shews that it can be rebutted by the conduct of the parties, taking the whole *res gestæ*.—LORD BLACKBURN.

2. —— **Paternity—Presumption of Legitimacy—Evidence—Admissibility.**

BURNABY *v.* BAILLIE, **42 Ch. D. 296.** In my opinion the certificate is admissible, because M. Roux proved that he had compared it with the original entry in the register, and that it is an accurate copy, and it stands in the same position as a copy made by himself to refresh his memory. I think it is also admissible as an examined copy of a French official document.

The 21st of July, 1884, the day on which Mrs. Burnaby left her home, was the 279th day before the day on which that child was born. The conclusion to which I have come upon the evidence is, that the usual period of gestation is from 273 or 274 days up to 279 or 280 days, though there is a good deal of evidence which shews that the period is sometimes longer or shorter—that there is sometimes a difference of eight or nine days in either direction. But, having regard to the normal or usual period of gestation, the medical evidence does not enable me to come to a positive conclusion. . . . . I have to decide the question of fact which was thus stated by Lord Lyndhurst in *Morris* v. *Davies* (5 Cl. & F. 216): Whether the circumstances are such as to satisfy me that no sexual intercourse did take place between these parties, at the period to which reference is had. . . . I find as matter of fact that no sexual intercourse had taken place for some time prior to the 21st of July.—NORTH, J.

LESSOR AND LESSEE.

1. ——

ELWES *v.* BRIGG GAS COMPANY, **33 Ch. D. 569.** A lease is only a contract for the possession and profits of the land [and would not pass anything else].—CHITTY, J.

2. —— **Agreement for lease—Usual Covenant.**

In re ANDERTON AND MILNER'S CONTRACT, **45 Ch. D. 476.**

3. —— **Restrictive Covenants.**

SPICER *v.* MARTIN, **14 App. Cas. 23.** The law on the subject has never been stated more clearly than it was by Vice-Chancellor Hall in *Renals* v. *Cowlishaw*.—LORD MACNAGHTEN.

24. It may, I think, be considered as determined that any one who has acquired land, being one of several lots laid out for sale as building plots, where the Court is satisfied that it was the

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LESSOR AND LESSEE—*continued.*

intention that each one of the several purchasers should be bound by and should as against the others have the benefit of the covenants entered into by each of the purchasers, is entitled to the benefit of the covenant; and that this right, that is, the benefit of the covenant, enures to the assign of the first purchaser, in other words, runs with the land of such purchaser. This right exists not only where the several parties execute a mutual deed of covenant, but wherever a mutual contract can be sufficiently established. A purchaser may also be entitled to the benefit of a restrictive covenant entered into with his vendor by another or others where his vendor has contracted with him that he shall be the assign of it, that is, have the benefit of the covenant. And such covenant need not be express, but may be collected from the transaction of sale and purchase.—HALL, V.-C.; LORD MACNAGHTEN.

25. The houses were to be built as private houses, and to be used for no other purpose. The houses were actually built as private houses, and offered to the public as such. Their character was unmistakeable; and every person who took one of the houses was required to enter into the same restrictive covenant. This restriction was obviously for the benefit of all the lessees on the estate; they all had a common interest in maintaining the restriction. This community of interest necessarily, I think, requires and imports reciprocity of obligation.

As regards the appellant, the case, I think, is doubly clear. It seems to me that when Mr. Spicer put his houses in Cromwell Gardens on the market, he invited the public to come in and take a portion of an estate which was bound by one general law—a law perfectly well understood, and one calculated and intended to add to the security of the lessees, and consequently to increase the price of the houses. The benefit of that increase, whatever it was, Mr. Spicer got. Can he or his representative be permitted to destroy the value of the thing he sold by authorizing the use of part of the estate for a purpose inconsistent with the law by which he professed to bind the whole?—LORD MACNAGHTEN.

See Landlord and Tenant.

LIBEL.

1. —— **Damages—Privilege.**

DAVIS *v.* SHEPSTONE, **11 App. Cas. 190.** It is one thing to comment upon or criticise, even with severity, the acknowledged

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LIBEL—*continued.*

or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.—LORD HERSCHELL, L.C.

191. As to the amount of damages; the assessment of these is peculiarly the province of the jury in an action of libel. The damages in such an action are not limited to the amount of pecuniary loss which the plaintiff is able to prove.—LORD HERSCHELL, L.C.

2. —— **Fair criticism.**

MERIVALE *v.* CARSON, **20 Q. B. D. 283.** Whatever is fair, and can be reasonably said of the works of authors or of themselves, as connected with their works, is not actionable, unless it appears that, under the pretext of criticising the works, the defendant takes an opportunity of attacking the character of the author; then it will be a libel.—LORD TENTERDEN, C.J.; BOWEN, L.J.

284. There is all the difference in the world between saying that you disapprove of the character of a work, and that you think it has an evil tendency, and saying that a work treats adultery cavalierly, when in fact there is no adultery at all in the story.—BOWEN, L.J.

3. —— **Injunction to restrain.**

LIVERPOOL HOUSEHOLD STORES ASSOCIATION *v.* SMITH, **37 Ch. D. 181.** To justify the Court in granting an interim injunction it must come to a decision on the question of libel or no libel before the jury decided whether it was a libel or not—the jurisdiction, therefore, is of a delicate nature, and ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where if the jury did not so find, the Court would set aside the verdict as unreasonable. In the case of an existing document brought before the Court, the Court can judge of its character; but how can the Court judge whether documents which are not yet in existence will be libellous? In my opinion it would be very dangerous to grant an interlocutory injunction with reference to future publication unless we could lay down definitely some line which would include only the publication of what would necessarily be libellous. In my opinion it would be very unadvisable to grant any injunction which would restrain fair discussion in the newspapers of matters of importance like that of the probable success or failure of a public company.—COTTON, L.J.

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LIBEL—*continued.*

4. —— Newspaper.

EMMENS *v.* POTTLE, **16 Q. B. D. 357.** The proprietor of a newspaper who publishes the paper by his servants, is the publisher of it, and is liable. The printer of the paper prints it by his servants, and therefore he is liable for a libel contained in it.—LORD ESHER, M.R.

The vendor of a newspaper is *primâ facie* liable for a libel contained in it, if he knows, or ought to know, that the paper is one which is likely to contain a libel.—BOWEN, L.J.

5. —— Privilege—Report of proceedings in Courts of Justice.

MACDOUGALL *v.* KNIGHT, **14 App. Cas. 200.** The ground upon which the privilege of accurately reporting what takes place in a Court of justice is based is that judicial proceedings are in this country public, and that the publication of what takes place there, even though matters defamatory to an individual may thus obtain wider circulation than they otherwise would, is allowed because such publication is merely enlarging the area of the Court, and communicating to all that which all had the right to know.

I am not prepared to admit that the judgment of a learned judge must necessarily be privileged. It is obvious that a partial account of what takes place in a Court of justice may be the exact reverse of putting the person to whom publication is made in the same position as if he were present himself.—LORD HALSBURY, L.C.

6. —— Publication of Judicial Proceedings.

MACDOUGALL *v.* KNIGHT, **25 Q. B. D. 7.** The publication without malice of an accurate report of what has been said or done in a judicial proceeding in a Court of justice is a privileged publication, although what was said or done would, but for the privilege, be libellous against an individual and actionable at his suit, and that this is true although what is published purports to be, and is, a report not of the whole judicial proceeding, but only of a separate part of it, if the report of that part is an accurate report thereof and published without malice.—LORD ESHER, M.R.

11. I am satisfied myself that the judgment of a judge of the land is in itself an act of such a public and distinct character as to make it to the interest of the commonwealth that they should know it *in toto*, and provided it is either given *verbatim* correctly, or correctly summarized, it seems to be that the public policy requires that to be the law, and I have no hesitation in saying that I believe that to be the law at the present day.—BOWEN, L.J.; FRY, L.J.

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LIBEL—*continued.*

7. —— **Publication in Trade Newspaper of Extracts from Register of County Court judgments.**

WILLIAMS *v.* SMITH, **22 Q. B. D. 134.**

See New Trial. 2.

Law of Libel Amendment Act, 1888.

LIBEL AND REGISTRATION ACT, 1881.

See Copyright. 5.

LIBEL, DEFAMATORY.

See Criminal Law. 7.

LIBRARIES.

See Public Libraries Acts—Amendment Acts, 1887 and 1890.

LICENCE, EFFECT OF.

HEAP *v.* HARTLEY, **42 Ch. D. 468.** A dispensation or licence properly passes no interest, but only makes an action lawful which without it had been unlawful; as a licence to go beyond the seas, to hunt in a man's park, to come into his house, are only actions which, without licence had been unlawful; but a licence to hunt in a man's park and carry away the deer killed to his own use, to cut down a tree in a man's ground and to carry it away the next day after to his own use, are licences as to the acts of hunting and cutting down; but as to carry away the deer killed and the tree cut down, they are grants.—(TINDAL, C.J.).

So here, a licence to enter upon a canal and take the ice is a mere licence; and the right of carrying it away is a grant of the ice so to be carried away.—LORD HATHERLEY, COTTON, L.J.

470. An exclusive licence is only a licence in one sense; that is to say, the true nature of an exclusive licence is this. It is a leave to do a thing, and a contract not to give leave to anybody else to do the same thing. But it confers like any other licence, no interest or property in the thing. A licence may be, and often is, coupled with a grant, and that grant conveys an interest in property, but the licence pure and simple, and by itself, never conveys an interest in property. It only enables a person to do lawfully what he could not otherwise do, except unlawfully. I think, therefore, that an exclusive licencee has no title whatsoever to sue.—FRY, L.J.

LICENSING ACTS.

See Inn.

Landlord and Tenant. 6.

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LIEN.

See Insurance, Life.
Maritime Lien.
Owner.
Solicitor. 3.
Solicitor. 4.
Solicitor. 5.

LIGHT.

1. —— **Prescription—Fluctuating interruption.**

PRESLAND *v.* BINGHAM, **41 Ch. D. 268.** The plaintiff must shew that he has enjoyed access of light for twenty years without interruption. If it should appear that there has been obstruction, he must also shew that it has not lasted for a whole year: if it appears that there has been a fluctuating obstruction, the defendant must shew that he has been obstructing for the whole space of twelve months, and that the plaintiff has acquiesced.—LINDLEY, L.J.

2. —— **Ancient Lights—Prescription Act.**

SCOTT *v.* PAPE, **31 Ch. D. 569.** The question to be considered is this, whether the alteration is of such a nature as to preclude the plaintiff from alleging that he is using through the new appertures in the new wall the same cone of light, or a sub-substantial part of that cone of light, which went to the old building.—COTTON, L.J.

574. The right to these pencils of light remains, even though the dominant tenement may be pulled down or altered with a view to being rebuilt. The structural identity of the building is not the test, but more, the measure of enjoyment is not the aperture itself, but the size and dimensions of an aperture in that position.—BOWEN, L.J.

575. The word "access," as used in that section (2 & 3 Wm. IV. cap. 7, s. 3) does not refer to the access through the orifice—through the aperture or window—but to the freedom of passage over the servient tenement.—FRY, L.J.

See Land Clauses Consolidation Act, 1845. 1.

LIMITATIONS—Real Property.

AGENCY COMPANY *v.* SHORT, **13 App. Cas. 798.** If a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the

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LIMITATIONS—*continued.*

intrusion took place. There is no one against whom he can bring an action. He cannot make an entry upon himself. There is no positive enactment, nor is there any principle of law, which requires him to do any act, to issue any notice, or to perform any ceremony in order to rehabilitate himself. No new departure is necessary. The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner, or any secret process at work for the possible benefit in time to come of some casual interloper or lucky vagrant.—LORD MACNAGHTEN.

799. The statute applies, not to want of actual possession by the plaintiff, but to cases where he has been out of, and another in, possession for the prescribed time. There must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be protected, to bring the case within the statute.—LORD MACNAGHTEN.

See Inconsistent and Contradictory Limitations.

LIMITATIONS, STATUTE OF.

1. —— **Receipt of Rent by Agent—Agent de son tort—Ratification by Owner—Trustee.**

LYELL *v.* KENNEDY, **14 App. Cas. 456.** If he received on behalf of the heirs, and if they could and did adopt and ratify his agency, they were in, and never out of, possession.

460. When the true owner can and does ratify an agency undertaken on his behalf, though without his antecedent authority, the case is the same as if he had himself received the rents.—EARL OF SELBORNE.

463. I do not hesitate to say that where the duty of persons is to receive property and to hold it for another, and to keep it until it is called for, they cannot discharge themselves from that trust by appealing to the lapse of time. They can only discharge themselves by handing over that property to somebody entitled to it.—GIFFARD, L.J.; LORD MACNAGHTEN.

2. —— **Cause of Action—Action for Subsidence—Res Judicata.**

DARLEY MAIN COLLIERY COMPANY *v.* MITCHELL, **11 App. Cas. 132.** For one cause of action you must recover all damages incident to it by law once and for ever.—LORD HALSBURY.

133. It is clear that no action would lie for the excavation. It is not, therefore, a cause of action; that case established that it is the damage and not the excavation which is the cause of action.

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LIMITATIONS, STATUTE OF—*continued.*

I cannot understand why every new subsidence, although proceeding from the same original act or ommission of the defendants, is not a new cause of action for which damages may be recovered. I cannot concur in the view that there is a breach of duty in the original excavation.—LORD HALSBURY.

138. Damages resulting from one and the same cause of action must be assessed and recovered once and for all.—COCKBURN, L.C.J.; LORD BLACKBURN.

140. One very important question raised in and decided by the case of *Bonomi* v. *Backhouse* was as to the rights of buildings to support, as distinguished from the rights of the natural soil to the support.—LORD BLACKBURN.

144. If a man sustained two injuries from a blow, one to his person and another to his property, as, for instance, damage to a watch, there is no doubt that he could maintain two actions in respect of the one blow.—LORD BRAMWELL.

LIQUIDATOR.

See Company. 25.

LOCAL GOVERNMENT—PUBLIC HEALTH ACT, 1875.

HOPKINS *v.* SMETHWICK LOCAL BOARD OF HEALTH, **24 Q. B. D. 714.** In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him £5; and as the Local Board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him; and there is no notice, unless notice is given of time when, and place at which the party may appear and shew cause.—WILLS, J.

LOCAL GOVERNMENT ACT, 1888—Roadside—Wastes—County Council.

CURTIS *v.* KESTEVEN COUNTY COUNCIL, **45 Ch. D. 509.** Roadside wastes are not vested in the County Council.—NORTH, J.

See Highway. 2.

County Electors Act, 1888.

LORD CAMPBELL'S ACT—Measure of Damages.

GRAND TRUNK RAILWAY COMPANY OF CANADA *v.* JENNINGS, **13 App. Cas. 803.** The right conferred by statute to recover damages in respect of death occasioned by wrongful act, neglect, or default, is restricted to the actual pecuniary loss sustained by each individual entitled to sue.—LORD WATSON.

804. When a man has no means of his own, and earns nothing,

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LORD CAMPBELL'S ACT—*continued.*

it is obvious that his wife or children cannot be pecuniary losers by his decease. . . . A very different case arises when the means of the deceased have been exclusively derived from his own exertions, whether physical or intellectual.—LORD WATSON.

LOST GRANT.

See Prescription.

LOST WILL.

See Will. 10.

LUNACY ACT, 1890.

To consolidate certain of the Enactments respecting Lunatics.

LUNACY ACTS AMENDMENT ACT, 1889.

LUNATIC.

HORNE *v.* POUNTAIN, **23 Q. B. D. 270.** The Legislature has never shewn any intention that a lunatic should be treated differently to other persons, with respect to his debts . . . a lunatic unable to pay his debts can be made a bankrupt.—CAVE, J.

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M.

MAGNA CHARTA.

See Mandamus. 3.

MAINTENANCE.

HARRIS *v.* BRISCO, **17 Q. B. D. 513.** Charity (even thoughtless and inconsiderate) is a good defence to an action for maintenance.—FRY, L.J.

See Accumulation.
Champerty and Maintenance.
Costs. 13.

MALICE.

See Criminal Law. 8.

MALICE—General.

See Criminal Law. 2.

MALICIOUS PROSECUTION—Corporation.

ABRATH *v.* NORTH EASTERN RAILWAY COMPANY, **11 App. Cas. 250.** No action for a malicious prosecution will lie against a corporation.—LORD BRAMWELL.

251. A corporation is incapable of malice or of motive. If the whole body of shareholders were to meet, and in so many words to say, " prosecute so and so, not because we believe him guilty, but because it will be for our interest to do it," no action would lie against the corporation, though it would lie against the shareholders who had given such an unbecoming order.—LORD BRAMWELL.

MANAGER.

See Company. 7.

MANDAMUS.

1. —— **Action of.**

THE QUEEN *v.* LAMBOURN VALLEY RAILWAY CO., **22 Q. B. D. 469.** A mandamus should be had recourse to in preference to a prerogative writ.—MANISTY, J.

2. —— **Alternate Remedy.**

THE QUEEN *v.* REGISTRAR OF JOINT STOCK COMPANIES, **21 Q. B. D. 136.** A mandamus ought not to be granted where there is another appropriate remedy.—WILLS, J.

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MANDAMUS—*continued.*

3. —— **Magna Charta.**

THE QUEEN *v.* BISHOP OF LONDON, **23 Q. B. D. 430.** The mandamus is a high prerogative writ invented for the purpose of supplying defects of justice, and by Magna Charta the Crown is bound neither to deny justice to any one, nor to delay anybody in obtaining justice.—MANISTY, J.

MARINE INSURANCE.

See Insurance, Marine.

MARITIME LIEN—Collision.

THE TASMANIA, **13 P. D. 118.** The result of the authorities cited appears to me to be this, that the maritime lien resulting from collision is not absolute. It is a *primâ facie* liability of the ship, which may be rebutted by shewing that the injury was done by the act of some one navigating the ship not deriving his authority from the owners; and that, by the maritime law, charterers in whom the control of the ship has been vested by the owners, are deemed to have derived their authority from the owners, so as to make the ship liable for the negligence of the charterers, who are, *pro hac vice*, owners. These propositions do not lead to the conclusion that where, as between the charterers and the person injured, the charterers are not liable, the ship remains liable nevertheless. On the contrary, I draw from these premises, the conclusion that whatever is a good defence of the charterers against the claim of the injured person is a good defence for the ship, as it would have been if the same defence had arisen between the owners and the injured person.—THE PRESIDENT (SIR JAMES HANNEN).

See Ship. 16.
Ship. 17.

MARRIAGE.

1. —— **In Bechuanaland according to the Customs of a Native Tribe—English Domicil.**

In re BETHELL. BETHELL *v.* HILYARD, **38 Ch. D. 234.** I conceive that, having regard to these authorities, I am bound to hold that a union formed between a man and a woman in a foreign country, although it may there bear the name of a marriage, and the parties to it may there be designated husband and wife, is not a valid marriage according to the law of England unless it be formed on the same basis as marriages throughout Christendom, and be in its essence "the voluntary union for life of one man and one woman to the exclusion of all others."—STIRLING, J.

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MARRIAGE—*continued.*

2. —— **Nullity of—Duress—Mental Prostration.**

SCOTT *v.* SEBRIGHT, **12 P. D. 23.** The Courts of law have always refused to recognise as binding contracts to which the consent of either party has been obtained by fraud or duress, and the validity of a contract of marriage must be tested and determined in precisely the same manner as that of any other contract.—BUTT, J.

MARRIED WOMAN.

1. —— **Chose in action—Title of husband.**

SMART *v.* TRANTER, **43 Ch. D. 596.** There is now no doubt as regards the choses in action of the wife not reduced into possession during the coverture, that if the husband survives he is beneficially entitled to them. If he takes out letters of administration he is entitled to them at law and in equity; but if he does not take out letters of administration the legal personal representative of the wife is the person to get them in, but, having got them in, holds them in trust for the husband.—LINDLEY, L.J.

2. —— **Married Women's Property Act—Power of Appointment.**

In re ROPER. ROPER *v.* DONCASTER, **39 Ch. D. 487.** A power of appointment is not itself property.—KAY, J.

3. —— **Restraint on Anticipation.**

In re GLANVILL. ELLIS *v.* JOHNSON, **31 Ch. D. 539.** As regards past income, I do not think that the protection extends to that, and I am of opinion that the Court can interfere with income which has accrued due before the act on which the title of the assignee depends.—COTTON, L.J.

4. —— **Restraint on Anticipation.**

In re LITTLE. HARRISON *v.* HARRISON, **40 Ch. D. 424.** The Conveyancing and Law of Property Act, 1881, s. 39, enables the Court to modify the dispositions of settlors by dispensing with a restraint on anticipation, but this is a discretionary power which, in my opinion, ought to be exercised with extreme caution, and only where a very strong case for its exercise is made out. If we acceded to the present application I think we should be holding out encouragement to tenants for life with powers of appointment to form schemes of this kind for getting the benefit of the reversionary interests of their children.—LOPES, L.J.

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MARRIED WOMAN—*continued.*

5. —— **Separate Estate.**

In re LAMBERT'S ESTATE. STANTON *v.* LAMBERT, **39 Ch. D. 633.** The course of subsequent decisions has been uniformly in favour of the husband, but in more recent cases the law has been generally stated to be that (in the absence of express provision to the contrary) the quality of separate property ceases on the death of the married woman, and that thereupon her undisposed of property devolves just as if the separate use had never existed. Sir G. Jessel, M.R., puts it thus: "The separate use, if I may say so, is exhausted when the wife has died without making a disposition. She enjoyed the income during her life, and she has not thought fit to exercise that which was an incident of her separate estate, the right of disposing of her property. Why should equity interfere further with the devolution of the estate?" Upon this view of the law the title of the husband is clear. So far as the property is undisposed of the quality of separate property ceases on the wife's death, and consequently the right of the husband accrues just as if the separate use had never existed.—STIRLING, J.

6. —— **Separate Property—Married Women's Property Act.**

PALLISER *v.* GURNEY, **19 Q. B. D. 521.** There must be separate property at the time the contract was entered into if the contract is to bind future separate property.—LOPES, L.J.

7. —— **Separate Property—Power of Appointment.**

Ex parte GILCHRIST. *In re* ARMSTRONG, **17 Q. B. D. 526.** The distinction between a power of appointment over property, and property has always been recognised.—LORD ESHER, M.R.

528. It is not property at all; it is a power and nothing more.—BOWEN, L.J.

531. No two ideas can well be more distinct; a "power" is no more "property" than the power to write a book or sing a song.—FRY, L.J.

MARRIED WOMEN'S PROPERTY ACT, 1882.

1. ——

In re JUPP. JUPP *v.* BUCKWELL, **39 Ch. D. 154.** In my opinion the Act was not intended to alter any rights except those of the husband and wife *inter se.*—KAY, J.

2. ——

SCOTT *v.* MORLEY, **20 Q. B. D. 125.** It seems to me that the Act of 1882 does not alter the legal liability of a married woman at all. It does not prevent the bringing of an action against a

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MARRIED WOMEN'S PROPERTY ACT, 1882—*continued.*

husband and wife in respect of a contract made by the wife before marriage, and it does not affect the case of a wrongful act committed by a woman during marriage, and, where at common law a married woman was liable to be taken under a *capias ad satisfaciendum*, in such cases she can now be summoned under sect. 5 of the Debtors Act, 1869, and be dealt with accordingly.

126. It appears to me that sect. 5 of the Debtors Act does not apply to the judgment which can be recovered against a married woman only by virtue of the Married Women's Property Act, 1882.—LORD ESHER, M.R.

See Husband and Wife. 2.
Husband and Wife. 3.
Husband and Wife. 4.
Husband and Wife. 5.

MASTER OF SHIP.

See Ship. 5.

MASTER AND SERVANT.

1. ——

HELMORE *v.* SMITH (2), **35 Ch. D. 456.** I could not sit by and allow it to go forth to the world that I countenance the doctrine that the confidential information received by a servant to advance his master's business may be used afterwards by him to advance his own business to the injury of his master's interests. It is part of the implied contract between the master and the servant that such confidential information is not to be used to the master's disadvantage.—BOWEN, L.J.

2. ——

CHISHOLM *v.* DOULTON, **22 Q. B. D. 740.** The general rule of law is that a master is not criminally responsible for the acts of his servants—FIELD, J.

3. ——

KIDDLE *v.* LOVETT, **16 Q. B. D. 611.** The master is not liable to his servant unless there be negligence on the part of the master. —LORD CAIRNS, L.C.; DENMAN, J.

4. —— **Misconduct of Servant.**

PEARCE *v.* FOSTER, **17 Q. B. D. 539.** Where a person has entered into the position of servant, if he does anything incompatible with the due or faithful discharge of his duty to his master, the latter has a right to dismiss him.—LORD ESHER, M.R.

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MASTER AND SERVANT—*continued.*

541. He has so conducted himself as to make his interest conflict with his duty [The plaintiff had habitually conducted himself in such a manner as would injure the business of his employers if his conduct were known].—LINDLEY, L.J.

542. It is sufficient if it is conduct which is prejudical or is likely to be prejudicial to the interests or to the reputation of the master. They were entitled to the unfettered use of his mind.—LOPES, L.J.

5. —— **Negligence—Employers' Liability Act, 1880.**

WEBLIN *v.* BALLARD, **17 Q. B. D. 124.** The master may (1) traverse negligence; (2) plead contributory negligence; (3) plead that servant knew of the defect in the ways, plant, or machinery, and did not communicate it to him.—A. L. SMITH, J.

6. —— **Volenti non fit injuria—Employers' Liability Act, 1880.**

THOMAS *v.* QUARTERMAINE, **18 Q. B. D. 685.** The defence arising from the maxim "*volenti non fit injuria,*" has not been affected by the Employers' Liability Act, 1880, and applies to the present case, and there was therefore no evidence of negligence arising from a breach of duty on the part of the defendant towards the plaintiff, and the plaintiff is not entitled to recover.—BOWEN and FRY, L.JJ.

698. The two defences, "*volenti non fit injuria,*" and "contributory negligence," are quite different.—BOWEN, L.J.

See Negligence. 2.
Negligence. 3.
Principal and Agent. 5.
Principal and Agent. 6.

MAXIMS.

See Legal Terms and Maxims.

MAYOR'S COURT—Jurisdiction—Cause of action arising wholly or in part within the city of London or the liberties thereof—Assignment of Debt.

READ *v.* BROWN, **22 Q. B. D. 132.** The legal right to a debt is not the same thing as the legal and other remedies for it.—LORD ESHER, M.R.

MEDICAL ACT, 1858.

See Judicial Inquiry.

MENS REA.

See Criminal Law. 8.

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MERCHANDISE MARKS ACT, 1887.

To consolidate and amend the Law relating to Fraudulent Marks on Merchandise.

METROPOLIS—Management Acts—Power of Vestry—Common Law.

VESTRY OF ST. JAMES AND ST. JOHN, CLERKENWELL *v.* FEARY, **24 Q. B. D. 710.** This is a case in which the Wandsworth District Board have taken upon themselves to pull down a house, and to saddle the owner with the expenses of demolition, without notice of any sort. There are two sorts of notice which may possibly be required, and neither of them has been given; one, a notice of a hearing, that the party may be heard if he has anything to say against the demolition; the other is a notice of the order, that he may consider whether he can mitigate the wrath of the Board, or in way modify the execution of the order. Here they have given him neither opportunity. It seems to me that the Board were wrong, whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions . . . . establish that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature.—BYLES, J.; LORD COLERIDGE, C.J.

MINERALS—Reservation of.

ELWES *v.* BRIGG GAS COMPANY, **33 Ch. D. 566.** The term "minerals" includes every substance which can be got from underneath the earth for the purpose of profit.—MELLISH, and JAMES, L.JJ.; CHITTY, J.

See Inclosure Act.
Railway Clauses Act.
Railway Company. 6.
Railway Company. 7.

MINES AND OTHER MINERALS—Whether Clay is included in other Minerals.

LORD PROVOST AND MAGISTRATES OF GLASGOW *v.* FARIE, **13 App. Cas. 669.** I cannot help thinking that the true test of what are mines and minerals in a grant was suggested by James, L.J., in *Hext* v. *Gill*, that a grant of "mines and minerals" is a question of fact "what these words meant in the vernacular of the mining world, the commercial world, and landowners," at the time when they were used in the instrument.—LORD HALSBURY, L.C.

672. When such a right is claimed against the owner of the

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MINES AND OTHER MINERALS—*continued.*

surface, I ask myself, Did anyone who wanted to purchase or acquire a clayfield, whether by disposition or reservation, ever bargain for it under the name of a right of working minerals? . . . The thing to be reserved is, to my mind, essentially the same, being neither more nor less than the right to work such substances and strata as are ordinarily known by the denomination of minerals in contracts between sellers and purchasers, or superiors and feuars.—LORD ORDINARY (LORD MCLAREN); LORD HALSBURY, L.C.

675. The only principle which I can extract from these authorities is this: that in construing a reservation of mines or minerals, whether it occur in a private deed or in an Inclosure Act, regard must be had, not only to the words employed to describe the things reserved, but to the relative position of the parties interested, and to the substance of the transaction or arrangement which such deed or act embodies. Mines and minerals are not definite terms; they are susceptible of limitation or expansion, according to the intention with which they are used.—LORD WATSON.

685. What valid distinction could be drawn between a seam of coal or ironstone a hundred yards beneath the surface, and one which came within two feet of it? And if the latter would be within the reservation, how can a seam of clay similarly situated be excluded?—LORD HERSCHELL.

696. I am inclined to think that when you make the word "mines" include that which is in no sense a mine, you do something more than avoid a narrow and restricted construction.—LORD MACNAGHTEN.

MINISTERIAL ACT.

See Judicial Function.

MISDESCRIPTION.

See Specific Performance. 2.

MISPRISION.

See Criminal Law. 10.

MISREPRESENTATION.

See Contract. 4.

Deceit, action of.

MONEY-DEALER.

See Banker. 2.

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MONUMENT.

See Burial, right of.
Will. 1.

MORTGAGE.

1. —— **Collateral advantage.**

JAMES *v.* KERR, **40 Ch. D.**

459. A man shall not have interest for his money and a collateral advantage besides for the loan of it, or clog the redemption with any by-agreement.—KAY, J.

460. The rule that a mortgagee should not be allowed to stipulate for any collateral advantage beyond his principal and interest did not depend on the laws against usury.—LORD ROMILLY; KAY, J.

2. —— **Collateral advantage.**

MAINLAND *v.* UPJOHN, **41 Ch. D. 126.** The law with regard to this is not affected by the repeal and abolition of the usury laws.

141. Upon a loan of money on a risky security it is legitimate, between mortgagor and mortgagee, to deduct from the actual amount a very considerable bonus—in that case as much as £300 out of £1000; and where that is deliberately done, and the parties completely understand one another, the mortgagor cannot afterwards re-open it, but is bound to let his property remain as a security, not for the money he actually received, but for the larger sum expressed to have been advanced.—KINDERSLEY, V.C.; KAY, J.

144. Of course, all this is quite independent of any case of improper dealing, exorbitant amount, great oppression, dealing with an ignorant person who has not got proper advice, and so on. —KAY, J.

3. —— **Consolidation.**

GRIFFITH *v.* POUND, **45 Ch. D. 553.**

4 —— **Notice.**

In re COUSINS, **31 Ch. D. 675.** Notice must be brought home to trustees to be effectual.—CHITTY, J.

5. —— **Policy of Insurance—Fetter on Redemption—Presumption.**

MARQUESS OF NORTHAMPTON *v.* POLLOCK, **45 Ch. D. 210.** I need not quote authorities to shew that Courts of Equity never will allow the equity of redemption to be cut off except by force of time or by the order of the Court. The mortgagor must be foreclosed if he does not redeem. Lord Hardwicke says that, as plainly

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MORTGAGE—*continued.*

as possible, and it has always been the rule established in Courts of Equity. "This Court," says Lord Hardwicke in *Toomes* v. *Conset*, "will not suffer, in a deed of mortgage, any agreement in it to prevail, that the estate become an absolute purchase in the mortgagee upon any event whatsoever."

212. It is very true that there are cases, as I pointed out, where the policy is affected by the mortgagee, and there it belongs to him. But here, from the way in which this was created, in my opinion, the mortgagor had just as much interest in it as if it had been a policy originally belonging to him; by the terms of its creation the Earl had an interest in it, that is to say he had a right to get the surplus of it after paying all the moneys which he had borrowed.—COTTON, L.J.

217. A presumption is a mere inference of fact to supply the place of better information. It cannot displace express convention between the parties. In the clear light of a distinct agreement upon the point the presumption pales its ineffectual fire and disappears.—BOWEN, L.J.

6. —— **Priority—Possession of Title Deeds—Notice—Equitable Mortgage.**

UNION BANK OF LONDON *v.* KENT, **39 Ch. D. 245.** It is an established rule, that as regards charges on real estate, notice is not necessary in order to complete the security. Where an equitable charge is given on personal estate in the hands of a trustee, notice to the trustee is necessary as against subsequent incumbrancers, but not so in the case of land.—COTTON, L.J.

[An equitable mortgage by deposit of a building agreement not postponed to subsequent equitable mortgage by deposit of the lease, though it would have been postponed if there had been a legal mortgage of the lease.]

7. —— **Redemption—Pledge.**

BANK OF NEW SOUTH WALES *v.* O'CONNOR, **14 App. Cas. 282.** If a chattel be pledged, the general property remains in the pledgor. The pledgee has only a special property. According to the doctrines of common law, that special property is determined if a proper tender is made and refused. The pledgee then becomes a wrong-doer. The pledgor can at once recover the chattel by action at law. But it is not so in the case of a mortgage where the mortgagor's estate is gone at law, nor is it so in the case of an equitable mortgage. A mortgagor coming into equity to redeem, must do equity and pay principal, interest, and costs

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MORTGAGE—*continued.*

before he can recover the property which at law is not his. So it is in the case of an equitable mortgage. It is a well established rule of equity that a deposit of a document of title without either writing or word of mouth, will create in equity a charge upon the property to which the document relates to the extent of the interest of the person who makes the deposit.—LORD MACNAGHTEN.

8. —— **Sale by First Mortgagee—Incorrect Particulars—Measure of Damages.**
TOMLIN *v.* LUCE, **43 Ch. D. 191.**

9. —— **Solicitor—Mortgagee—Clogging the Redemption.**
FIELD *v.* HOPKINS, **44 Ch. D. 530.** According to the mortgage law recognised in this country, a mortgagee cannot get anything from the estate beyond his principal, interest, and costs; therefore profit-charges, which he is not entitled to be paid, stand on the same footing as commission, which he clearly cannot charge.—KAY, J.

See Equitable Mortgage.

MORTGAGEE.

See Annuitants.

MORTGAGEE IN POSSESSION.

1. —— **Account.**
WHITE *v.* CITY OF LONDON BREWERY COMPANY, **39 Ch. D. 563.** No principle is better established than the principle, that a mortgagee shall not get any advantage out of the mortgage fund beyond his principal and interest. Between a mortgagor and mortgagee the latter, when in possession, must account for the actual rents and profits received or made by him, if these rents and profits can be actually ascertained. Where they cannot be, there must be a resort to a fair occupation rent.—NORTH, J.

2. —— **Account.**
WHITE *v.* CITY OF LONDON BREWERY COMPANY, **42 Ch. D. 243.** Then the mortgagor commits breaches of his covenants, and the mortgagees take possession. Now they are bound to account to him after the sale—for the proceeds of the sale—for any rents which they have received, or but for their wilful neglect or default might have received, from the property while they were in possession—and for any profits which, during that period they made out of and by the mortgaged property. They have not to account for anything more, and as against that they are entitled

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MORTGAGEE IN POSSESSION—*continued.*

to set the expenses which they have fairly incurred in consequence of having been obliged to take possession, and keep possession, and to sell.—LORD ESHER, M.R.

MORTGAGOR AND MORTGAGEE.

1. —

In re WALLIS. *Ex parte* LICKORISH, **25 Q. B. D. 180.** It has been settled for many years that the rights of mortgagor and mortgagee *inter se*, depend upon the contract between them, and that when there is no express contract, but only the ordinary contract which arises out of the relation of mortgagor and mortgagee, the mortgagee cannot charge the mortgagor with remuneration for his own personal services in relation to the mortgage debt or the mortgage security. This rule is not limited to solicitors, but it extends to any mortgagee who is capable of giving and who does give his own personal services in relation to the mortgage debt or security.—LORD ESHER, M.R.

2. —

MAGNUS *v.* QUEENSLAND NATIONAL BANK, **36 Ch. D. 32.** A mortgagee after his debt is paid off, is in a fiduciary position towards the mortgagor with respect to the satisfied security. There is an implied trust to surrender the estate to the person entitled to demand it The satisfied mortgagee owes a duty to the mortgagors. He is bound to take care that the security gets back to the mortgagors, or to some one to whom they authorize it to be conveyed.—KAY, J.

3. —

KINNAIRD *v.* TROLLOPE, **39 Ch. D. 642.** Where a mortgagee has obtained a decree for foreclosure absolute, he may still sue the mortgagor on the covenant provided he retains the mortgaged property in his possession, but by so suing he gives the mortgagor a new right of redemption, notwithstanding the foreclosure, and the mortgagor may file a bill to redeem. If, however, the mortgagee has sold the mortgaged property, a Court of Equity will interfere to restrain an action on the covenant. In these cases the mortgaged property had ceased to be vested in the person who insisted on his legal rights under the covenant to pay.

643. A mortgagee may pursue all his remedies at once, he may bring actions of covenant and ejectment, and at the same time proceed to foreclose the mortgage.—STIRLING, J.

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MORTGAGOR AND MORTGAGEE—*continued.*

4. —— Equitable mortgage by Deposit—Costs of Mortgage.

NATIONAL PROVINCIAL BANK OF ENGLAND *v.* GAMES, **31 Ch. D. 582.** A mortgagee is entitled to be allowed in account the cost of all proceedings reasonably taken by him to enforce his rights under his mortgage contract, e.g. (1) the costs of an action for the recovery of the debt; (2) costs of correspondence with a surety who had given a promissory note for part of the debt; (3) all expenses properly incurred with reference to the preparation of a legal mortgage which the mortgagor refused to execute; (4) the expense of such inspection of the title deeds as was necessary for preparing it (but not the costs of investigating the mortgagor's title); (5) costs of correspondence with the mortgagor as to the legal mortgage.

5. —— Tenant's right to redeem.

TARN *v.* TURNER, **39 Ch. D. 460.** Any person entitled to an interest carved out of the fee simple is entitled to come in and redeem (subject to other equities and in his proper place).—KEKEWICH, J.

MORTMAIN AND CHARITABLE USES ACT, 1888.

MUNICIPAL ELECTION—Acceptance and Vacation of Office.

THE QUEEN *v.* MAYOR, &C., OF BANGOR, **18 Q. B. D. 361.** If a person holding one office be elected to another, and accepts that election, he thereby vacates the office he held.—LORD ESHER, M.R.

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N.

NATIONALITY—Naturalization.

In re BOURGOISE, **41 Ch. D. 321.** The question whether these children are English or French appears to me to be one of very great difficulty, and I do not pretend to decide it.—LINDLEY, L.J.

NATURALIZATION.

See Nationality.

NAVIGATION.

See Ship. 8.

NECESSARIES.

See Infant. 4.
Ship. 17.

NEGLIGENCE.

1. —— **Contributory Negligence.**

WAKELIN *v.* LONDON AND SOUTH WESTERN RAILWAY COMPANY, **12 App. Cas. 51.** Contributory negligence in such a case as the present seems to me to consist of the absence of that ordinary care which a sentient being ought reasonably to have taken for his own safety, and which, had it been exercised, would have enabled him to avoid the injury of which he complains, or the doing of some act which he ought not to have done, and but for which the calamity would not have occurred. I have used the words "ordinary care;" extraordinary caution is not required, but if by the use of ordinary caution he might have avoided the injury, and did not, he is not entitled to recover damages.—LORD FITZGERALD.

2. —— **Master and Servant—Common Employment.**

JOHNSON *v.* LINDSAY, **23 Q. B. D. 513.** We know of no case where it has been held that a man is liable for an injury caused by his servant when the man doing the injury and the injured man are to be considered as employed in the work of another, who is the common master of both.—LOPES, L.J.

517. It must be presumed that a servant takes upon himself the risk of any injury he may sustain by the negligence of another servant under the same master and in the same employment, and that such risk is part of the consideration for the wages which he is entitled to receive.—KELLY, C.B.; FRY, L.J.

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NEGLIGENCE—*continued.*

3. —— "Volenti non fit injuria."

MEMBERY *v.* GREAT WESTERN RAILWAY COMPANY, **14 App. Cas. 179.** The plaintiff was also prevented from recovering because he had voluntarily done the work with full knowledge of the risk he ran.—LORD HALSBURY, L.C., and LORD BRAMWELL.

See Estoppel. 2.
Master and Servant. 5.
Ship. 10.

NEGOTIABLE INSTRUMENT.

See Promissory Note. 3.

NEMO EST HÆRES VIVENTIS.

See Contingent Title.

NEW TRIAL.

1. ——

METROPOLITAN RAILWAY COMPANY *v.* WRIGHT, **11 App. Cas. 153.** It is not enough that the judge, who tried the case, might have come to a different conclusion on the evidence than the jury, or that the judges, in the Court where the new trial is moved for, might have come to a different conclusion, but there must be such a preponderance of evidence, assuming there is evidence on both sides to go to the jury, as to make it unreasonable, and almost perverse, that the jury when instructed and assisted properly by the judge should return such a verdict.—EARL OF SELBORNE, L.C.

154. The verdict ought not to be disturbed unless it was one which a jury, viewing the whole of the evidence reasonably, could not properly find.—LORD HERSCHELL, L.C.

2. —— **Excessive Damages—Action for Libel.**

PRAED *v.* GRAHAM, **24 Q. B. D. 55.** If the Court thinks that, having regard to all the circumstances of the case, the damages are so excessive that no twelve men could reasonably have given them, then they ought to interfere with the verdict. If the authorities are looked at, that will be found to be the rule of conduct which the judges have adopted. If the Court can see that the jury in assessing damages have been guilty of misconduct, or made some gross blunder, or have been misled by the speeches of the counsel, those are undoubtedly sufficient grounds for interfering with the verdict, but they come within the larger rule of conduct which I have laid down, and are grounds which are included in that rule.

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NEW TRIAL—*continued.*

In actions of libel there is another rule, which is this:—the jury in assessing damages are entitled to look at the whole conduct of the defendant from the time the libel was published down to the time they give their verdict. They may consider what his conduct has been before action, after action, and in Court during the trial.—LORD ESHER, M.R.

NEW TRUSTEES—Their duties.

HALLOWS *v.* LLOYD, **39 Ch. D. 691.** What are the duties of persons becoming new trustees of a settlement? Their duties are quite onerous enough, and I am not prepared to increase them. I think that when persons are asked to become new trustees, they are bound to enquire of what the property consists that is proposed to be handed over to them, and what are the trusts. They ought also to look into the trust documents and papers to ascertain what notices appear among them of incumbrances and other matters affecting the trust.—KEKEWICH, J.

NEWSPAPER.

See Contempt of Court. 1.
Copyright. 5.
Libel. 4.

NEXT FRIEND—Duties and Liabilities of, discussed.

RHODES *v.* SWITHENBANK, **22 Q. B. D. 577.** If the next friend does anything in the action beyond the mere conduct of it, whatever is so done must be for the benefit of the infant, and if, in the opinion of the Court it is not so, the infant is not bound.—LORD ESHER, M.R.

579. He is the officer of the Court to take all measures for the benefit of the infant in the litigation.—BOWEN, L.J.

A next friend has no power to enter into a compromise by which the infant gives up a right and the next friend obtains a benefit.—FRY, L.J.

NOTICE.

See Mortgage. 4.
Mortgage. 6.
Metropolis.

NUISANCE—Railway Company.

BROWN *v.* EASTERN AND MIDLANDS RAILWAY COMPANY, **22 Q. B. D. 392.** If a person erects on his own land anything whatever

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NUISANCE—*continued.*

calculated to interfere with the convenient use of the road, he commits a nuisance. Every railway which, without express parliamentary sanction, ran by the side of a highway so as to frighten horses, &c., would be a nuisance but for the parliamentary authority under which it was made.—STEPHEN, J.

See Injunction. 5.

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O.

OATHS ACT, 1888.

1. —— **Obiter Dicta.**

MILLS *v.* ARMSTRONG. THE BERNINA, **13 App. Cas. 12.** I believe that an experienced lawyer may be, as it were, instinctively right, without at the moment being able to give a good reason for his opinion.—LORD BRAMWELL.

2. ——

SLATTERY *v.* NAYLOR, **13 App. Cas. 451.** It might be wiser, even at the expense of some inconvenience to the community, to make some concession to one of the most softening and refining of human feelings, the reverence and love that is felt for the dead, and the desire of resting in the same spot with them—LORD HOBHOUSE.

3. —— **Trade dishonesty.**

In re WOOD'S TRADE-MARK. WOOD *v.* LAMBERT & BUTLER, **32 Ch. D. 264.** If practices of this description are as common as they are alleged to be, the name of an English manufacturer or merchant will cease to be an honourable one, and will carry with it, not notions of honesty and fair dealing, but of covin fraud and deceit.—FRY, L.J.

4. ——

In re DEWHIRST'S TRUSTS, **33 Ch. D. 419.** I have known cases in which this Court has declined to be bound by previous decisions of the Court of Appeal, even when pronounced by such eminent judges as Lord Justice Knight-Bruce and Lord Justice Turner. I doubt whether Lord Justice James did decide this point; but if he did, we must overrule his decision, so that the case may no longer be treated as an authority.—COTTON, L.J.

5. ——

COOKE *v.* NEW RIVER COMPANY, **38 Ch. D. 71.** I believe that *obiter dicta*, like the proverbial chickens of destiny, come home to roost sooner or later in a very uncomfortable way to the judges who have uttered them, and are a great source of embarrassment in future cases.—BOWEN, L.J.

6. —— **Evidence, Onus of.**

MAGNUS *v.* QUEENSLAND NATIONAL BANK, **37 Ch. D. 478.** The question may be decided by applying the simple principle of law

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OATHS ACT, 1888—*continued.*

that, in the absence of evidence, no illegality or irregular proceeding in the transaction of business is to be presumed.—BOWEN, L.J.

OFFICER OF COURT.

Ex parte SIMMONDS. *In re* CARNAC, **16 Q. B. D. 312.** The Court will direct its officer to do that which any high-minded man would do, viz., not to take advantage of the mistake of law.—LORD ESHER, M.R.

OFFICIAL LIQUIDATOR.

See Company. 24.

OFFICIAL RECEIVER.

See Bankruptcy. 10.

OPEN COVER.

See Insurance, Marine. 5.

OPEN SPACES ACT, 1887.

ORDER.

BATEMAN *v.* POPLAR DISTRICT BOARD OF WORKS, **33 Ch. D. 381.** The existence of an order does not depend upon its being drawn up.—COTTON, L.J.

See Appeal. 8.

Jurisdiction. 2.

OWNER—Lien—Salvage—Ratification.

FALCKE *v.* SCOTTISH IMPERIAL INSURANCE COMPANY, **34 Ch. D. 248.** Work and labour done or money expended by one man to preserve or benefit the property of another do not, according to English law, create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will . . . with regard to salvage, general average, and contribution, the maritime law differs from the common law . . . With regard to ordinary goods upon which labour or money is expended with a view of saving them or benefiting the owner, there can, as it seems to me, according to the common law be only one principle upon which a claim for repayment can be based, and that is where you can find facts from which the law will imply a contract to repay or to give a lien. It is perfectly true that the inference of an understanding between the parties—which you may translate into other language by calling it an implied con-

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OWNER—*continued.*

tract—is an inference which will unhesitatingly be drawn in cases where the circumstances plainly lead to the conclusion that the owner of the saved property knew that the other party was laying out his money in the expectation of being repaid . . . A man can ratify that which purports to be done for him, but he cannot ratify a thing which purports to be done for somebody else.—Bowen, L.J.

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P.

PARENT.

See Habeas Corpus. 1.

PARISH REGISTERS.

See Evidence.

PARLIAMENT—County Vote.

WATSON *v.* BLACK, **16 Q. B. D. 276.** A *cestui que trust* is not entitled to a vote unless he is in actual possession or receipt of the rents or profits.

PART PERFORMANCE.

See Company. 5.
Illegal Contract.

PARTICULARS OF DEMAND—Discovery.

MILLAR *v.* HARPER, **38 Ch. D. 112.** It is good practice and good sense that where the defendant knows the facts and the plaintiffs do not, the defendant should give discovery before the plaintiffs deliver particulars.—BOWEN, L.J.

PARTNERS—Service on.

SHEPHERD *v.* HIRSCH, PRITCHARD AND COMPANY, **45 Ch. D. 235.** Service on one partner within the jurisdiction is good service on all the partners, although the partnership is a foreign partnership, and all the partners reside and are domiciled out of the jurisdiction.—CHITTY J.

PARTNERSHIP.

1. —— **Expiration of Term—Continuation.**

NEILSON *v.* MOSSEND IRON COMPANY, **11 App. Cas. 308.** When the members of a mercantile firm continue to trade as partners after the expiry of their original contract, without making any new agreement, that contract is held in law to be prolonged or renewed, by tacit consent, or, as it is termed in the law of Scotland, by "tacit relocation." The rule obtains in the case of many contracts besides that of partnership; and its legal effect is, that all the stipulations and conditions of the original contract remain in force, in so far as these are not inconsistent with any implied term of the renewed contract. The main distinction between the old contract and the new in the present case consists in this, that the latter is a contract determinable at will. It is an implied term of such a contract that each partner has the right

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PARTNERSHIP—*continued.*

instantly to dissolve the partnership whenever he thinks proper. The right must, of course, be exercised in *bonâ fide*, and not for the purpose of deriving an undue advantage from the state of the firm's engagements; but no question of that kind arises here. —LORD WATSON.

2. —— **Share of Profits—Bovill's Act.**

BADELEY *v.* CONSOLIDATED BANK, **38 Ch. D. 248.** I think that the *ratio decidendi* (of *Cox* v. *Hickman*) is that the proposition laid down in *Waugh* v. *Carver*, viz., that the participation in the profits of a business, does of itself, by operation of law, constitute a partnership, is not a correct statement of the law of England (it has not been overruled, but it is qualified certainly), but that the true question is, as stated by Lord Cranworth, whether the trade is carried on, on behalf of the person sought to be charged as a partner, the participation in the profits being a most important element in determining that question, but not being in itself decisive; the test being, in the language of Lord Wensleydale, whether it is such a participation of profits as to constitute the relation of principal and agent between the person taking the profits and those actually carrying on the business.—LORD BLACKBURN; COTTON, L.J.

PARTNERSHIP ACT, 1890.

To declare and amend the Law of Partnership.

PARTNERSHIP DEBT—Joint and Separate Creditors—Res judicata.

In re HODGSON. BECKETT *v.* RAMSDALE, **31 Ch. D. 184.** Where some members of a firm or some joint contractors are sued and judgment is obtained against them, the matter then passes into a *res judicata*, and is to be treated thenceforth as a debt against those persons only against whom that judgment has been recovered, and recourse cannot be had to a person who was not joined in that action. There is an exception to that rule, one which has long prevailed in equity, to the effect that when one member of a firm has died, though at law the debt would from that time forth be only the debt of the survivors, in equity recourse might also be had to the estate of the deceased partner.—SIR J. HANNEN.

188. There is in the cases of joint contract and joint debt, as distinguished from the cases of joint and several contract and joint and several debt, only one cause of action.—BOWEN, L.J.

PASSENGER'S LUGGAGE.

See Railway Company. 8.

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PATENT.

1. ——

In re AVERY'S PATENT, **36 Ch. D. 317.** A man who, having learned abroad . . . . that somebody else had invented something, quietly copied the invention, and brought it over to this country, and then took out a patent . . . . is a first and true inventor within the statute, if the invention, being in other respects novel and useful, was not previously known in this country.—JESSEL, M.R.; STIRLING, J.

2. —— **Objections to.**

BADISCHE ANILIN UND SODA FABRIK *v.* LEVINSTEIN, **12 App. Cas. 711.** Objections taken to patent: that (1) it is not new; (2) it is not useful; (3) the specification did not sufficiently ascertain and describe the nature of the invention.—LORD HALSBURY, L.C.

3. —— **Provisional Specification.**

VICKERS SONS & CO. *v.* SIDDELL, **15 App. Cas. 499.** I think it is an essential condition of a good patent that the invention described in the provisional should be the same as that in the complete specification, and I think the 3rd sub-sect. of sect. 26 preserves this as a ground upon which an action for the infringement of a patent right may be defended, and a ground upon which a patent may be revoked.—LORD HALSBURY.

4. —— **Specification.**

EDISON AND SWAN ELECTRIC LIGHT COMPANY *v.* WOODHOUSE, **32 Ch. D. 524.** An inventor has no right to put into his final specification as part of his invention a discovery which he had not made at the time when he filed his provisional specification.—BUTT, J.

PATENTS, DESIGNS AND TRADE MARKS ACT, 1888

PATERNITY.

See Legitimacy. 1.

PATH.

See Highway. 1.

PENALTIES, PENAL AND LIQUIDATED.

LORD ELPHINSTONE *v.* MONKLAND IRON AND COAL COMPANY, **11 App. Cas. 332.** The sum, although described in one part of the agreement, as "the penalty therein stipulated" was not a penalty; but estimated or stipulated damages.—LORD WATSON, LORD HERSCHELL, L.C., LORD BLACKBURN, LORD FITZGERALD, LORD HALSBURY.

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PERILS OF THE SEA.

See Insurance, Marine. 6.
Ship. 6.

PERPETUITY—Remoteness—Possibility on a possibility.

WHITBY *v.* MITCHELL, **44 Ch. D. 92.** The cases of a possibility upon a possibility . . . gave rise to this important rule, that, if land is limited to an unborn person during his life, a remainder cannot be limited, so as to confer an estate by purchase on that person's issue . . . I have always understood that to be the settled rule of law, and I am not aware of any decision or dictum which in any way impugns it. But it is said that the old rule became obsolete, or merged or confused in the more modern law of perpetuities . . . This is a mistake. The rule against perpetuities was invented much later on account of the law of shifting uses and executory devises. When shifting uses and executory devises were invented, it became necessary to impose some limit upon them, and the doctrine of perpetuities has arisen from that necessity. The old rule against double possibilities is a rule that has not been abrogated, and it is founded on very good sense, because it is not desirable that land should be tied up to a greater extent than that allowed by the rule. So far from supporting ingenious devises for tying up land longer, the time has long gone by for that.—LINDLEY, L.J.

PETITION OF RIGHT—Contract by Crown.

WINDSOR AND ANNAPOLIS RAILWAY CO. *v.* THE QUEEN AND THE WESTERN COUNTIES RAILWAY CO., **11 App. Cas. 613.** Whenever a valid contract has been made between the Crown and a subject, a petition of right will lie for damages resulting from a breach of that contract by the Crown.—LORD WATSON.

614. The Sovereign cannot be sued in a petition of right for a wrong done by the executive.—LORD WATSON.

PEWS.

See Ecclesiastical Law. 8.
Rent Charge.

PLEADINGS.

1. —— Inconsistent Pleadings.

In re MORGAN. OWEN *v.* MORGAN, **35 Ch. D. 500.** To go the length of saying that no inconsistent pleading can be pleaded, appears to me not warranted by the rules and contrary to the established practice of the Courts. There is no difference in this respect between the practice in the Chancery Division and the

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PLEADINGS—*continued.*

practice in the Queen's Bench Division, where, we know, ever since the Judicature Acts have passed, inconsistent defences, such as never indebted and payment, are daily pleaded, and they give rise to no trouble. They are not considered embarrassing, and if you add to them a set-off, it does not make them embarrassing.—LINDLEY, L.J.

2. —— **Groundless Defence.**

DADSWELL *v.* JACOBS, **34 Ch. D. 284.** Any pleading which discloses no reasonable ground of action or defence is demurrable at once, and it is something more, it is perfectly frivolous. That is the sort of thing that is struck at by Order XXV., r. 4.—LINDLEY, L.J.

PLEDGE.

1. ——

SEATH *v.* MOORE, **11 App. Cas. 374.** A pledge or security without delivery of possession is, I think, not good.—LORD BLACKBURN.

2. —— **Bill of Sale.**

HILTON *v.* TUCKER, **39 Ch. D. 673.** Neither of the Bills of Sale Acts of 1878 or 1882, was intended to be applied, or is applicable to a parol contract, or to anything of the character of a pledge.

676. I must decide this question of law which has been raised, whether it is essential to a pledge, not that there should be a delivery, because that is admitted to be essential, but that delivery should be actually contemporaneous with the advance of the money. When I say actually contemporaneous, I am not proposing to discuss a case where delivery has followed within an hour or a day afterwards, so that in support of the honesty of the transaction one might assume them to be practically contemporaneous, though not identical in point of time . . . I am at a loss to understand why delivery should be actually contemporaneous with the advance. It seems to me that the transaction may be divided into two parts, and that though fraud may intervene in any case, however careful lawyers or actors may be, still remembering that in the meantime there is no property in the lender until he has got the goods, it seems to me a very small opening for fraud to hold that the delivery need not be actually contemporaneous with the pledge.—KEKEWICH, J.

See Bill of Sale. 12.

Mortgage. 7.

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POLICY OF INSURANCE.

See Mortgage. 5.

POOR LAW—Settlement.

OVERSEERS OF MANCHESTER *v.* GUARDIANS OF ORMSKIRK UNION, **24 Q. B. D. 682.** By this statute Parliament intervened once for all, and the interpretation placed upon the statute is that a legitimate child under the age of sixteen shall not be capable of acquiring a settlement for itself, but shall follow its parentage settlement under that age, and that an illegitimate child is to be treated as far as may be, as though it were legitimate; it cannot of course, be in all respects so treated.—LORD COLERIDGE, C.J.

POOR-RATE—Rateable Value—Hypothetical Tenant.

SMITH *v.* CHURCHWARDENS, &C., OF BIRMINGHAM, **22 Q. B. D. 219.** It is to no purpose to say that such property cannot in practice be let by the year; no more can railways, canals, docks, or gasworks. The Act of Parliament requires the assumption of a tenancy from year to year to be made, and you can no more impugn the hypothesis of such a tenancy in rating matters than in logic you are permitted to deny your opponent's hypothetical premiss. — WILLS, J.

POSSESSION.

BYGRAVE *v.* METROPOLITAN BOARD OF WORKS, **32 Ch. D. 152.** The Court has no power to take property from the owner except under some statutory provision. A rightful owner rightfully in possession is entitled to hold the property till it is decided in due form of law that some other person is entitled to it.—BOWEN, L.J.

POSSIBILITY ON A POSSIBILITY.

See Perpetuity.

POVERTY.

See Charity. 4.
Costs. 13.

POWER OF APPOINTMENT.

1. —— Fraud on Power.

In re CRAWSHAY. CRAWSHAY *v.* CRAWSHAY, **43 Ch. D. 625.** The donee of a limited power of appointment may well execute it in favour of an object of the power, though he believes and knows that the appointee will at once dispose of the property in favour of persons who are not objects of the power. But if, besides this belief and knowledge, there is a bargain between the appointor

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POWER OF APPOINTMENT—*continued.*

and appointee that the appointee shall make a disposition in favour of persons not objects of the power, and the just result of the evidence is, that the appointment would not have been made but for the bargain, then the appointment is bad. The question is, to which of these two classes of cases the present case belongs.—KNIGHT-BRUCE, L.J.; NORTH, J.

2. —— **Particular Power—Excessive Execution.**

In re PORTER'S SETTLEMENT. PORTER *v.* DE QUETTEVILLE, **45 Ch. D. 189.** I do not think it is right or possible to hold that the appointment of the life estate is warranted by that power. As I understand that power, it is a power to appoint in tail neither more nor less, among such children—of course, children only—as the appointors may select. I do not think the power of appointment warrants the power to appoint for life.—FRY, L.J.

See Married Woman. 2.
Married Woman. 7.

POWER OF ATTORNEY—Endorsement.

MUTUAL PROVIDENT LAND INVESTING AND BUILDING SOCIETY *v.* MACMILLAN, **14 App. Cas. 597.** A statutory declaration was, for the protection of the purchaser, endorsed on the conveyance that the attorney had not received any notice of the revocation of the power of attorney by death or otherwise.

POWERS, FRAUD UPON.

LEADER *v.* DUFFEY, **13 App. Cas. 303.** A device resorted to for the purpose of enabling the tenant for life to recapture the property which he had ostensibly settled for the benefit of his family is a fraud upon the power.—LORD HALSBURY, L.C.

PRACTICE.

1. —— **Correcting Order.**

TUCKER *v.* NEW BRUNSWICK TRADING COMPANY OF LONDON, **44 Ch. D. 252.** If Mr. Justice Chitty had been applied to, he might have set this matter right; for though the order had been passed and entered, he had jurisdiction to correct it as not rightly expressing the order he had made.—COTTON, L.J.

2. —— **Jurisdiction of Master.**

BRYANT *v.* READING, **17 Q. B. D. 130.** Order LIV., r. 12, gives master authority and jurisdiction of judge, but does not make his decision that of a Court or judge (so as to preclude an appeal to a judge at Chambers).—LORD ESHER, M.R.

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PREFERENCE SHARES.

See Company. 15.

PREROGATIVE WRIT.

See Mandamus. 1.

PRESCRIPTION—Lost Grant—Presumed Grant.—2 & 3 Will. 4, c. 71.

TILBURY *v.* SILVA, **45 Ch. D. 107.** Under the 4th section of the Prescription Act, evidence of user since the year 1829, interrupted four years before action brought, that interruption being acquiesced in, would not be sufficient to establish a prescriptive right. To prove a prescriptive right you must go back very much further. Here the only attempt to prove a prescriptive right under the Act is by evidence of user for that period of time. That seems to me of itself quite fatal to the claim of right by prescription under the statute.—KAY, J.

118. It is the principle of the English law to suppose a legal origin for long-established user, to assume that there is some justification to be found for acts of open enjoyment which have continued as long as the memory of living people extends; we are in no way departing from or infringing this principle of law.

121. We are not now considering a case of immemorial enjoyment—a case of a series of acts continuing from time out of mind—for which it is the duty of the Court to strain every nerve to find a legal origin. We are examining a case of a user which must be confined to the last forty-five years.—BOWEN, L.J.

See Air.

Easement. 1.

Light. 1.

Light. 2.

PRESUMPTION.

See Legitimacy. 1.

Mortgage. 5.

Will. 10.

PRESUMPTION OF LAW.

See Ecclesiastical Law. 8.

PRINCIPAL AND AGENT.

1. —

LORING *v.* DAVIS, **32 Ch. D. 631.** As between the principal and agent, if the instructions are ambiguous, the principal cannot turn round on the agent and say that the meaning of the instructions was different.—CHITTY, J.

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PRINCIPAL AND AGENT—*continued.*

If a principal gives an order to an agent in such uncertain terms as to be susceptible of two different meanings, and the agent *bonâ fide* adopts one of them and acts upon it, it is not competent to the principal to repudiate that act as unauthorized because he meant the order to be read in the other sense of which it is equally capable.—LORD CHELMSFORD; CHITTY, J.

2. ——

BLACKBURN *v.* VIGORS, **17 Q. B. D. 559.** The true principle of law is a rule of right and wrong; a man cannot, by delegating to an agent to do what he might do himself, obtain greater rights than if he did the thing himself, The alleged principle is not the law of England in any case.—LORD ESHER, M.R.

3. —— **Contract by Agent—Ratification.**

BOLTON PARTNERS *v.* LAMBERT, **41 Ch. D. 298.** Where you have a contract in letters or other such like documents, that is to say, not reduced into a document of legal form; you are bound to look, not only at what occurred before—what led up to the contract—but also at what occurred afterwards, with regard to the contract, in order to determine the question whether there was a completed contract, or whether the parties were in truth only negotiating.

301. The doctrine of ratification is this, that when a principal on whose behalf a contract has been made, though it may be made in the first instance without his authority, adopts it and ratifies it, then, whether the contract is one which is for his benefit and which he is enforcing, or which is sought to be enforced against him, the ratification is referred to the date of the original contract, and the contract becomes as from its inception as binding on him as if he had been originally a party.—KEKEWICH, J.

303. If an offer is made and accepted, subject to the preparation of a formal agreement, there is no contract till the formal agreement is signed, but the cases shew that a mere expression of an intention to have further documents does not prevent there being a contract.—COTTON, L.J.

309. The plaintiffs subsequently did adopt the contract, and thereby recognised the authority of their agent Scratchley. Directly they did so the doctrine of ratification applied and gave the same effect to the contract made by Scratchley as it would have had if Scratchley had been clothed with a precedent authority to make it.

The ratification is dragged back as it were, and made equipol-

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PRINCIPAL AND AGENT—*continued.*

lent to a prior command. [*Omnis ratihabitio retrotrahitur et mandato equiparatur.*]—LOPES, L.J.

4. —— **Liability.**

BRITISH MUTUAL BANKING COMPANY *v.* CHARNWOOD FOREST RAILWAY COMPANY, **18 Q. B. D. 717.** I know of no case where the employer has been held liable when his servant has made statements not for his employer, but in his own interest.—LORD ESHER, M.R.

5. —— **Master and Servant—Bribes—Witness.**

MAYOR, &C., OF BOROUGH OF SALFORD *v.* LEVER, **25 Q. B. D. 374.** When a contractor bribes a servant in order that a servant may get for the contractor the master's orders, the master has two distinct causes of action—one against the servant for the profit he has made by the bribes; the other against the contractor and the servant jointly and severally for any loss that the master may have suffered by the joint fraud of the contractor and the servant. I agree, further, that the master, even though he takes from the servant the bribes which the servant has received from the contractor, is under no obligation to give credit for those bribes in reduction of the damages which the master has suffered by the joint fraud of the contractor and the servant, unless, indeed, the master knew of the servant taking the bribes and allowed him to do so.

376. An agreement to present an intended witness with moneys proportioned to the effect of his evidence is an immoral agreement and void as against public morality.—WILLIAMS, J. [Affirmed [1891] 1 Q. B. 168.]

6. —— **Master and Servant—Managing Director—Profit made by Agent—Commission—Salary.**

BOSTON DEEP SEA FISHING AND ICE COMPANY *v.* ANSELL, **39 Ch. D. 357.** If a servant, or a managing director, or any person who is authorized to act, and is acting, for another in the matter of any contract, receives, as regards the contract, any sum, whether by way of percentage or otherwise, from the person with whom he is dealing on behalf of his principal, he is committing a breach of duty. It is not an honest act, and, in my opinion, it is a sufficient act to shew that he cannot be trusted to perform the duties which he has undertaken as servant or agent. He puts himself in such a position that he has a temptation not faithfully to perform his duty to his employer. He has a temptation, especially where he is getting a percentage on expenditure, not to cut down the

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PRINCIPAL AND AGENT—*continued.*

expenditure, but to let it be increased, so that his percentage may be larger. I do not, however, rely on that, but what I say is this, that where an agent entering into a contract on behalf of his principal, and without the knowledge or assent of that principal, receives money from the person with whom he is dealing, he is doing a wrongful act, he is misconducting himself as regards his agency, and, in my opinion, that gives to his employer, whether a company or an individual, and whether the agent be a servant, or a managing director, power and authority to dismiss him from his employment as a person who by that act is shewn to be incompetent of faithfully discharging his duty to his principal.—COTTON, L.J.

364. If it is a profit which arises out of the transaction, it belongs to his master, and the agent or servant has no right to take it, or keep it, or bargain for it, or to receive it without bargain, unless his master knows it. The servant who is dismissed for wrongful behaviour cannot recover his current salary. . . . The contract which his master has made is that he shall pay the salary only at the end of the current period which has not yet expired, and the servant by his wrongful conduct has prevented himself from suing for that salary by non-performance of the condition-precedent under the contract.—BOWEN, L.J.

368. In my judgment the conduct of Ansell in so dealing was a fraud—a fraud on his principals—a fraud, not according to any artificial or technical rules, but according to the simple dictates of conscience, and according to the broad principles of morality and law, and I think it is the duty of the Courts to uphold those broad principles in all cases of this description.—FRY, L.J.

7. —— **Signature by Agent.**

In re WHITLEY PARTNERS, LIMITED, **32 Ch. D. 341.** At common law, where a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it; nevertheless there may be cases in which a statute may require personal signature.—BLACKBURN, J.; BOWEN, L.J.

We ought not to restrict the common law rule, *qui facit per alium, facit per se,* unless the statute makes a personal signature indispensable.—QUAIN, J.; BOWEN, L.J.

8. —— **Warranty of Authority.**

FIRBANK'S EXECUTORS *v.* HUMPHREYS, **18 Q. B. D. 60.** Where a person by asserting that he has the authority of the principal

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PRINCIPAL AND AGENT—*continued.*

induces another person to enter into any transaction which he would not have entered into but for that assertion, and the assertion turns out to be untrue, to the injury of the person to whom it is made, it must be taken that the person making it undertook that it was true, and he is liable personally for the damage that has occurred. . . . The damages, under the general rule, are arrived at by considering the difference in the position he would have been in had the representation been true, and the position he is actually in, in consequence of its being untrue.—LORD ESHER, M.R.

62. Speaking generally, an action for damages will not lie against a person who honestly makes a misrepresentation which misleads another. But to this general rule there is at least one well established exception, viz., where an agent assumes an authority which he does not possess, and induces another to deal with him upon the faith that he has the authority which he assumes. —LINDLEY, L.J.

9. —— **Warranty of Authority—Damages.**

MEEK *v.* WENDT, **21 Q. B. D. 129.** The plaintiff is entitled to all the damages which are the natural and proximate consequence of the false assertion of authority.—CHARLES, J.

The measure of damages is what the plaintiff actually lost by losing the particular contract which was to have been made by the alleged principal if the defendant had had the authority he professed to have: in other words, what the plaintiff would have gained by the contract which the defendant warranted should be made.—LORD ESHER, M.R.; CHARLES, J.

PRINCIPAL AND SURETY.

1. ——

MAYOR, &C., OF DURHAM *v.* FOWLER, **22 Q. B. D. 404.** Mere non-communication of circumstances affecting the situation of the parties, material for the surety to be acquainted with, and within the knowledge of the persons obtaining a surety bond, was undue concealment, though not wilful or intentional. Undue concealment is the omission to divulge facts within the knowledge of the persons to whom the bond is given, which they were bound in law to divulge.—LORD CAMPBELL; CHARLES, J.

2. —— **Release of Surety.**

CLARKE *v.* BIRLEY, **41 Ch. D. 422.** In order that the giving of time by a creditor to his principal debtor without the consent of a

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PRINCIPAL AND SURETY—*continued.*

surety for the debt may have the effect of releasing the surety, there must be a binding contract to give time capable of being enforced, and the contract must be with the principal debtor. If the contract is made with a third party, for instance with a co-surety, the surety will not be released.

PRINTER.

See Libel. 4.

PRIORITY.

See Mortgage. 6.

PRIVILEGE.

See Discovery. 2.
Discovery. 4.
Discovery. 5.
Libel. 1.
Libel. 5.
Solicitor. 6.

PRIVILEGE, BREACH OF.

See Copyright. 3.

PROBATE—Lost Will—Evidence of Contents.

WOODWARD *v.* GOULSTONE, **11 App. Cas. 475.** In order to support a will propounded, when it is proved by parol evidence only, that evidence ought to be of extreme cogency, and such as to satisfy one beyond all reasonable doubt that there is really before one substantially the testamentary intentions of the testator.—LORD HERSCHELL, L.C.

477. It does not seem to me that the testator always has this secondary intention, that if the primary intention of giving the legacies should fail the residuary legatee should get the benefit. No doubt the law gives the residuary legatee the benefit, though I doubt very much whether the testator ever thinks of it, supposing a legacy to fail.—LORD HERSCHELL, L.C.

See Will. 10.

PROBATE COURT.

1. —— **Jurisdiction.**

BUCKMASTER *v.* BUCKMASTER, **33 Ch. D. 491.** The Probate Court has a jurisdiction over the subject-matter contained in a settlement, which jurisdiction it will exercise mainly for the benefit of the children.—BACON, V.-C.

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PROBATE COURT—*continued.*

2. —— **Jurisdiction of.**

CONCHA *v.* CONCHA, **11 App. Cas. 565.** The judge of the Court of Probate had no jurisdiction to decide what was to be done with the residuary sum . . . that would be done by the Court of Chancery—it could not be done by the Court of Probate.—LORD BLACKBURN.

PROBATE DUTY.

1. ——

ATTORNEY-GENERAL *v.* MARQUIS OF AYLESBURY, **12 App. Cas. 672.** The accumulations of the personal estate of a lunatic invested in realty held to be liable to probate duty at the death of the lunatic as part of his personal estate.

2. —— **Situation of Business.**

LAIDLAY *v.* THE LORD ADVOCATE, **15 App. Cas. 483.** The question to be determined is, what is the local situation of the asset with which we have to deal . . . what is to be regarded as the locality in which the business which is the property of the partnership is situate? Probate duty attaches to *bona notabilia* in the place where the goods are situate, wholly irrespective of the question of the domicil of the testator. . . . The business carried on was the cultivation of estates, all of which were situate in India, and the selling of the produce of these estates. The business properly so called was entirely carried on there.—LORD HERSCHELL.

PROMISSORY NOTE.

1. ——

In re WHITAKER (a person of unsound mind), **42 Ch. D. 127.** The payee of a voluntary bond can bring an action on the bond at law; the payee of a promissory note for which there is no consideration cannot maintain an action at all.—LINDLEY, L.J.

2. ——

In re GEORGE. FRANCIS *v.* BRUCE, **44 Ch. D. 631.** It is quite clear that a promissory note, payable on demand, is a present debt, and is payable without any demand, and the statute begins to run from the date of it.—CHITTY, J.

3. —— **Non-extinguishment of.**

GLASSCOCK *v.* BALLS, **24 Q. B. D. 15.** A negotiable instrument remains current, even though it has been paid; and there is nothing to prevent a person to whom it has been indorsed for value without knowledge that it has been paid from suing.—LORD ESHER, M.R.

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PROMOTERS.

See Company. 17.
Company. 18.

PROSECUTIONS, STIFLING.

WINDHILL LOCAL BOARD OF HEALTH *v.* VINT, **45 Ch. D. 363.** Stifling a prosecution for a public object is illegal, even though in the individual case it could be shewn that there was no injury to the public, because it takes the administration of the law out of the hands of those to whom it is committed, namely, the judges, and puts it into the hands of a private individual to determine what shall be done in the particular case.—COTTON, L.J.

366. As a general principle, it may be stated that it is the duty of every prosecutor where the public are interested to prosecute either to conviction or to acquittal. Again, it may be stated as a general principle that it is inexpedient to stop the course of the law in a criminal matter where a public right is involved—that it is inexpedient to take out of the hands of the law and commit to an individual the determining of what is to be done in a particular case.—FRY, L.J.

PROVISIONAL LIQUIDATOR.

See Company. 23.

PROVISIONAL SPECIFICATION.

See Patent. 3.

PROXIMATE CAUSE.

See Insurance, Marine. 7.

PUBLIC HEALTH ACT, 1875.

See Local Government.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

To amend the Public Health Acts.

PUBLIC HOUSE—Restrictive Covenant—Covenant running with Land.

CLEGG *v.* HANDS, **44 Ch. D. 520.** Then there is a covenant about not getting ale or beer from other people. Now just let us see whether this lease does or does not contain any indication either one way or the other as to whether the benefit of this was capable of being assigned. The very first thing that one comes across is the interpretation clause saying that the term "lessors," which applies to the brewers, shall include "each of them and their and each and every of their heirs, executors, administrators, and assigns." Those words are never found in what are called personal contracts. If I were to enter into an engagement with an artist

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PUBLIC HOUSE—*continued.*

to paint my picture, I should not put those words in. If he died, I should not leave it with his executors to finish what he had done. Such words are out of place altogether in a contract which is personal in that sense.—LINDLEY, L.J.

523. But then a question is raised as to whether the benefit of this covenant runs with the reversion. It was contended by Mr. Collins that it did not run with the reversion, and that it was purely collateral. The benefit to run with the reversion must touch or concern the demised premises. Now does this covenant touch or concern the demised premises? It relates to the mode of enjoyment of a public-house. The thing demised is a public-house, and the covenant compels the covenantee to buy the beer of the covenantor and his assigns. In my opinion, it touches and concerns the demised premises; it affects the mode of enjoyment of the premises, and therefore it runs with the reversion.—LOPES, L.J.

PUBLIC LIBRARIES ACTS AMENDMENT ACT, 1887.

PUBLIC LIBRARIES ACTS AMENDMENT ACT, 1890.

PUBLIC MEETING.

See Chairman of Meeting.

PUBLIC WORSHIP REGULATION ACT, 1874.

See Ecclesiastical Law. 5.
Ecclesiastical Law. 6.

PUBLISHER.

See Libel. 4.

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Q.

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R.

RAILWAY AND CANAL COMMISSION—Railway and Canal Traffic Act, 1888.

PELSALL COAL AND IRON COMPANY *v.* LONDON AND NORTH WESTERN RAILWAY COMPANY, **23 Q. B. D. 536.** *Semble*, that the expression "person interested" in the section includes any person who makes out by proper evidence that the rates which he seeks to have distinguished are really and substantially competitive rates with his own.—WILLS, J., and MR. COMMISSIONER PRICE.

Semble, that it includes "all persons who have a *bonâ fide* interest in knowing how the particular rates which are the subject of their application are made up."—COMMISSIONER SIR F. PEEL.

Semble, that the Court has power under the section to require a railway company to distinguish rates in its rate-books in cases in which the company books traffic to stations which are not upon its own line.—WILLS, J., MR. COMMISSIONER PRICE, COMMISSIONER SIR F. PEEL.

RAILWAY AND CANAL TRAFFIC ACT, 1888.

See Railway and Canal Commission.

RAILWAY CLAUSES ACT—Minerals.

MIDLAND RAILWAY CO. *v.* MILES, **33 Ch. D. 647.** A mine owner is entitled to work in mines just as if he had not sold the surface (to a railway company) so as to let it down.

RAILWAY COMPANIES ACT, 1867.

See Railway Company. 10.

RAILWAY COMPANY.

1. —— **Abandonment—Compensation.**

In re RUTHIN AND CERRIG-Y-DRUIDION RAILWAY ACT, **32 Ch. D. 442.** As to the various heads of compensation which will be allowed.

2. —— **Alternative Rates—Just and Reasonable Conditions.**

GREAT WESTERN RAILWAY CO. *v.* MCCARTHY, **12 App. Cas. 228.** If the consignor has an offer *bonâ fide* made to him of having his goods carried upon terms just and reasonable, and voluntarily chooses in consideration of a pecuniary benefit to exonerate the carrier from any part of his ordinary responsibility, a contract thus limiting the carrier's liability may be just and reasonable, though without the alternative option it would not be so.—LORD HERSCHELL.

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RAILWAY COMPANY—*continued.*

3. —— **Carrier—Carriage of Dogs.**

DICKSON *v.* GREAT NORTHERN RAILWAY CO., **18 Q. B. D. 183.** At common law no person is bound as a common carrier to carry any goods of a kind which he does not profess to carry. Unless he professes to carry dogs for people in general, he is not bound to carry a dog for any particular individual; and if a carrier says he will not carry dogs except on certain terms, he can lawfully refuse to carry any particular dog on any other terms. . . . The common law, therefore, does not oblige the company to carry dogs at all; and at common law no action will lie against the company for refusing to carry a dog. . . . The Railway and Canal Traffic Act, 1854, materially altered the law . . . and imposes on railway companies the duty to afford reasonable facilities for carrying all passengers, goods, and animals. . . . The defendants are bound to provide reasonable facilities for carrying dogs, and are, in other words, bound to carry them at reasonable times and on reasonable terms.—LINDLEY, L.J.

4. —— **Carrier—Tolls, Unequal—Undue Preference.**

DENABY MAIN COLLIERY CO. *v.* MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY CO., **11 App. Cas. 111.** In order to bring the case within the language of the section, the *termini* both of arrival and departure must be the same.—LORD HALSBURY, L.C.

121. The injunction or interdict may be granted if it is shewn to the Court that there is an undue or unreasonable preference, or undue or unreasonable prejudice.—LORD BLACKBURN.

5. —— **Jurisdiction of Railway Commissioners.**

THE QUEEN *v.* RAILWAY COMMISSIONERS AND DISTINGTON IRON COMPANY, LIMITED, **22 Q. B. D. 642.** The question always is: is this a case in which you can bring your action? If so, the Commissioners have no jurisdiction.—MANISTY, J.

6. —— **Mineral—Compensation.**

BROWN *v.* COMMISSIONER FOR RAILWAYS, **15 App. Cas. 249.** It would be wrong . . . to impose upon a person whose land has been taken from him against his will the burden of proving by costly experiments the mineral contents of his land as a condition-precedent to obtaining compensation, merely because the opinion of experts may be in conflict on the subject, or because, in the opinion of a Court of Appeal, the weight of the scientific evidence is adverse to the claim. . . . Further, it must be borne in mind that it does not follow because a seam is not presently workable

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RAILWAY COMPANY—*continued.*

at a profit, that no compensation is to be given for it if it is likely to prove profitable in the future.—LORD MACNAGHTEN.

7. —— Mines near Railway—Minerals.

MIDLAND RAILWAY CO. *v.* ROBINSON, **37 Ch. D. 395.** The railway company is not bound to give their notice under sect. 78 of their desire or intention to purchase within thirty days. They may give that at any time. They may postpone their intention of purchasing on the owner giving notice of his intention to work until the support which would be taken away by working becomes to them a practical question. . . . They may give notice to the landowner to buy one plot at one time and another plot at another time.

397. There must be not only an expression of desire, but an honest actual existence of the desire to work either by himself or his lessees to justify an owner in giving such a notice. . . . If it appeared that the notice was a mere vexatious one, that would not be a notice of a desire to work within the meaning of this section.—COTTON, L.J.

404. With regard to sect. 77, that section provides that minerals are not to pass by the conveyance to the company, except such as are necessarily dug up in the construction of the line which are expressly provided for.—LOPES, L.J.

8. —— Passenger's Luggage.

GREAT WESTERN RAILWAY CO. *v.* BUNCH, **13 App. Cas. 37.** I do not think that any of your lordships entertain any doubt that if the plaintiff's luggage were entrusted to the porter for deposit and custody as distinguished from the physical handing over for the purpose of transit, the defendants would not be liable.—LORD HALSBURY, L.C.

44. Porters do sometimes undertake the charge of luggage which is merely intended for future transit; when they do so, they exceed the limits of their implied authority, and, in that case, their possession cannot be regarded as the possession of their employers.—LORD WATSON.

48. If the passenger arrives before the train is at the platform, whether of a terminal station or not, the porter may certainly refuse to do more than take the luggage on to the platform and leave it there in charge of the passenger. Of course, if the passenger wants to get his ticket, and says so, the porter must take the luggage on to the platform and wait and see to it till

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RAILWAY COMPANY—*continued.*

the passenger has got his ticket and comes to see to it himself.—LORD BRAMWELL.

9. —— Repairs of Roadway.

MAYOR, &C., OF BURY *v.* LANCASHIRE AND YORKSHIRE RAILWAY COMPANY, **20 Q. B. D. 288.** Whatever works the section compels the railway company to execute, it likewise compels them to maintain for ever.—LORD ESHER, M.R.

10. —— Scheme of Arrangement—Railway Companies Act, 1867.

In re EAST AND WEST INDIA DOCK COMPANY, **44 Ch. D. 67.** In order to deal with this case it is necessary to consider the theory of schemes under the Railway Companies Act of 1867. The provisions of that Act come into force in the case of railway companies which are in difficulties. The first condition of the application of the Act is, that they shall not be able to pay their creditors. It is no part of the object of the Act to wind up a company in the sense in which a joint stock company is wound up under the winding up Acts. The theory is that the company is to be kept going, and steps are to be taken for the purpose of enabling the company to pay their way and pay off their creditors by means of a going concern. The whole of the present scheme is clearly based upon that principle. Those who have prepared it see the difficulties, and very serious difficulties, indeed, they are. The company cannot go on without arranging in some way with their creditors and gaining time. If they were wound up to-morrow, whether there would be 20s. in the pound for their creditors I do not know, for docks are not very saleable things, but we need not speculate on that. The scheme is based upon the principle that it is for the benefit of everybody—creditors secured and unsecured, and shareholders—that the company shall be kept going, and that opportunities shall be made for paying off creditors by degrees.

Now, having got that general view, let us see what is the nature of the provisions of the Act. . . . Unsecured creditors are not required by the Act to assent to the scheme, nor can any minority of them, however small, be bound by any majority of them, however large. No majority of unsecured creditors can bind a single dissentient. Moreover, although the unsecured creditors are not required to assent, they are entitled to be heard in opposition to the scheme, which involves the conclusion that their objections to it must be fairly and properly considered by

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RAILWAY COMPANY—*continued.*

the tribunal before whom the scheme comes for approval. Therefore, although these gentlemen are not required to assent, their dissent, and the grounds of their dissent, require to be considered.

Now, it has been said, and said with truth, that dissentient unsecured creditors are not bound by the scheme. They are not bound to take the benefits, if any, which are offered to them by the scheme. They are left to their legal remedies if they do not choose to come in under it. But although it is perfectly true that they are not bound by the scheme in any such sense as that, it would be a great mistake to suppose that the scheme is a matter of perfect indifference to them, and that it in no way, directly or indirectly, affects their rights. . . . Now, what I wish to call attention to is this, that the scheme, if confirmed, is valid and binds the company. That which binds the company binds the unsecured creditors of the company in this sense, that any disposition by the company of this property which binds the company will affect the unsecured creditors. . . . Whatever affects me affects my unsecured creditors; so far as my property is concerned, if I give it away, so much the worse for them; they cannot follow it; they can only come against me. If I create valid trusts which are enforceable against me, and which are not open to the charge of being fraudulent against my creditors, my unsecured creditors are bound and they cannot attach that trust property. In that sense these schemes become very important indeed to unsecured creditors; and, although it is true that in one sense they are not bound, yet in another sense they are very seriously affected by them.—LINDLEY, L.J.

11. —— **Ultrâ Vires.**

TOMKINSON *v.* SOUTH EASTERN RAILWAY, **35 Ch. D. 677.** The question is whether the act proposed to be done is within the powers of the railway company, or outside its powers. If it is outside its powers, it is now perfectly settled that any one shareholder may come to this Court and say, "This company is going to do an act which is beyond its powers; stop it," and the Court thereupon has no discretion in the matter.—KAY, J.

12. —— **Unequal Rates.**

GLASGOW AND SOUTH WESTERN RAILWAY COMPANY *v.* MACKINNON, **11 App. Cas. 386.** As to reduction in rates and repayment of over-charges.

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RATIFICATION—Acquiescence.

La Banque Jacques. Cartier *v.* La Banque d'Epargne de la Cité et du District de Montreal, **13 App. Cas. 118.** Acquiescence and ratification must be founded on a full acknowledgment of the facts, and further it must be in relation to a transaction which may be valid in itself and not illegal, and to which effect may be given as against the party by his acquiescence in the adoption of the transaction.—Lord FitzGerald.

See Company. 5.
Company. 6.
Owner.
Principal and Agent. 3.

RECEIVER.

See Company. 24.

RECITALS.

See Construction. 2.

RECTIFICATION.

Caird *v.* Moss, **33 Ch. D. 29.** The Court of Chancery never has given, and never will give, relief on the ground that a man has a right to rectification, unless that is raised by some proceeding in the nature of an action by the person who claims it.—Kay, J.

34. It would be against the principles on which Courts of Equity act to allow an action for rectification to be commenced at so late a stage as that at which the present action is brought. —Cotton, L.J.

35. There was no *res judicata*, but an attempt to reform a spent agreement and recover the money which has been paid under it cannot be allowed.—Kay, J.; Cotton, L.J.

REDEMPTION.

See Mortgagor and Mortgagee. 5.

REFERENCES.

1. —— **Judicature Act.**

Knight *v.* Coales, **19 Q. B. D. 300.** If any part of the matter in dispute consists of mere account which cannot conveniently be tried in the ordinary way, sect. 3 gives a jurisdiction to refer not only that part, but any other issues in the action which the Court or a judge may in his discretion think fit. Whether or not that discretion is properly exercised will, like every other matter of discretion, be subject-matter of appeal. We are of opinion that this discretion should be exercised with extreme caution, regard being had to the relative importance of that which is matter of

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REFERENCES—*continued.*

account as compared with that which is not. The matter of account giving the jurisdiction should not be incidental or subordinate to the other questions in dispute, but should be a substantial element to be decided in the action to justify a compulsory reference.—LOPES, L.J.

2. —— **Judicature Act, 1873, s. 56.**

WEED *v.* WARD, **40 Ch. D. 561.** The questions to be referred, if they have not already arisen, must be such as are certain to arise, otherwise this section [which gives power to refer "any question arising in any cause or matter"] will be used for purposes wholly different from those for which it was introduced.—LINDLEY, L.J.

REFRESHER FEES.

1. ——

In re HARRISON, **33 Ch. D. 52.** As to the authority of the solicitor to pay, and as to the *quantum* to be allowed.

2. ——

EASTON *v.* LONDON JOINT STOCK BANK, **38 Ch. D. 33.** Daily refreshers were introduced into the Chancery Division when it became the practice to try actions with *vivâ voce* evidence or with cross-examination of witnesses who had made affidavits, and refreshers were allowed on the principle that it could not be estimated beforehand by the solicitors delivering the brief how long the examination of the witnesses on either side would occupy, and it was therefore desirable that the same fees should be allowed as were allowed in similar cases at common law. But this principle does not generally apply to hearings in the Court of Appeal, because, as a general rule, there is no oral evidence before the Court of Appeal. . . . That refreshers are not confined to witness actions is shewn by this, that in the House of Lords, and I think also in the Privy Council, where a case takes more than a certain time refreshers are allowed on taxation at fixed sums. But what has been the practice in the Court of Appeal? As far as I understand, both in the Court of Appeal in Chancery and before the Exchequer Chamber, it has been the practice not to allow daily refreshers of a fixed amount, but if the Taxing Master in either Division is satisfied that the fee originally marked on the brief of counsel is not sufficient, then he allows an addition to be made to it, and allows it in taxation as against the opponent, and, of course, also as between the solicitor and his own client who has instructed him.—COTTON, L.J.

36. Unfortunately misconception arises by the frequent appli-

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REFRESHER FEES—*continued.*

cation of the term "refresher" where it ought not to be applied. When a solicitor comes before the master on an application to allow refreshers in non-witness cases, on the ground that the case has been a heavy one, or the argument prolonged, he is wrong in putting his application in the shape of a demand for the allowance of refreshers. The only ground on which, in such a case, the fee ought to be increased by the master, is the ground that there has been a miscalculation by the solicitor at the inception of the trial when the fee was marked, and that he under-marked the fee. Now, in such a case, if there has been a clear miscalculation, it appears to me that it would be monstrously unjust not to allow it to be corrected.—BOWEN, L.J.

3. ——

SVENDSEN *v.* WALLACE, **16 Q. B. D. 27.** Refreshers can, in the discretion of the taxing master, be allowed on an argument before the Court of Appeal.—DAY, and A. L. SMITH, JJ.

RELEASE—Equitable.

BLAKE *v.* GALE, **32 Ch. D. 581.** It amounts really to an equitable release, when a mortgagee for his own interest has consented to a distribution.—BOWEN, L.J.

REMAINDER—Executory Devise.

RICHARDSON *v.* HARRISON, **16 Q. B. D. 107.** After a gift in fee there can be no remainder; any gift after must be by way of executory limitation.—COTTON, L.J.

REMAINDERMAN.

See Tenant for Life. 1.
Tenant for Life. 2.

REMOTENESS.

See Perpetuity.

RENT-CHARGE—Confusion of Boundaries—Pews.

SEARLE *v.* COOKE, **43 Ch. D. 525.** The owner of a rent-charge, so long as it is duly paid, has no power or interest to ascertain whether the land charged is kept distinct from other land of the landowner who pays him, and if that landowner confuses the boundaries, or allows them to become confused, he can hardly refuse on that ground to pay the rent-charge, or call upon the owner of it to bear the expense of ascertaining such boundaries.—KAY, J.

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RENUNCIATION OF CONTRACT.

See Repudiation of a Contract.

REPAIRS.

See Tenant for Life. 1.
Tenant for Life. 2.

REPORTS.

See Libel. 5.

REPRESENTATIONS.

See Estoppel. 2.

REPRESENTATIVE.

In re WARE. CUMBERLEGE *v.* CUMBERLEGE-WARE, **45 Ch. D. 277.** What is the meaning of the words "or their respective representative"? That was considered in a well-known case before Vice-Chancellor Kindersley, of *In re Crawford's Trusts.* He there laid down that the words were to be taken, in the absence of context to the contrary, as meaning executors or administrators of the person represented, not the next of kin.—STIRLING, J.

REPUDIATION OF CONTRACT.

JOHNSTONE *v.* MILLING, **16 Q. B. D. 467.** When one party assumes to renounce the contract, that is by anticipation refuses to perform it, he thereby so far as he is concerned, declares his intention then and there to rescind the contract. Such a renunciation does not of course amount to a rescission of the contract, because one party to a contract cannot by himself rescind it, but by wrongfully making such a renunciation of the contract he entitles the other party, if he pleases, to agree to the contract being put an end to, subject to the retention by him of his right to bring an action in respect of such wrongful rescission. The other party may adopt such renunciation of the contract by so acting upon it as in effect to declare that he too treats the contract as at an end, except for the purpose of bringing an action upon it for the damages sustained by him in consequence of such renunciation. He cannot, however, himself proceed with the contract on the footing that it still exists for other purposes, and also treat such renunciation as an immediate breach. If he adopts the renunciation, the contract is at an end except for the purposes of the action for such wrongful renunciation; if he does not wish to do so, he must wait for the arrival of the

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REPUDIATION OF CONTRACT—*continued.*

time when in the ordinary course a cause of action on the contract would arise.—LORD ESHER, M.R.

See Landlord and Tenant. 8.

REPUGNANT CONDITION.

See Absolute Gift.

Settlement. 4.

REQUISITIONS.

See Vendor and Purchaser. 4.

RES JUDICATA—Abuse of the Process of the Court.

MACDOUGALL *v.* KNIGHT, **25 Q. B. D. 10.** The short ground for this application is either that a plea of *res judicata*, if put on the record, must succeed; or that the proceedings in this action are shewn to be vexatious and an abuse of the process of the Court. In my opinion, the defendant is right in both these contentions. Upon the first ground, *Reichel* v. *Magrath* is in point. In that case the House of Lords decided that it was within the jurisdiction of a Court of justice to prevent a defeated litigant raising the same question which the Court had decided in another action.—FRY, L.J.

See Contract. 1.

Limitations, Statute of. 2.

Partnership Debt.

RESCISSION OF CONTRACT.

See Repudiation of a Contract.

RESIDUARY LEGATEE.

See Executors. 4.

RESTRAINT OF TRADE—"So far as the law allows."

DAVIES *v.* DAVIES, **36 Ch. D. 383.** If a covenant is in any way limited, either sufficiently as regards space, or sufficiently as regards time, then it will not be considered as an absolute restraint of trade, but only a limited restraint, and then the question as to whether that limit is reasonable will come into consideration.—COTTON, L.J.

396. No contract in restraint of trade which is unreasonable, which is larger than is necessary to protect the interests of contracting parties, is good. . . . We have a contract not to trade in any way to affect the two Davieses; not to act in any way to affect them—not to deal in any way to affect them. I think that

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RESTRAINT OF TRADE—*continued.*

no such vague and general covenant, which is not even in terms confined to injurious affection, could be enforced.—FRY, L.J.

RESTRAINT ON ANTICIPATION.

See Election. 2.
Husband and Wife. 5.
Married Woman. 3.
Married Woman. 4.

RESTRICTIVE COVENANT.

1. ——

MACKENZIE *v.* CHILDERS, **43 Ch. D. 275.** A statement of a binding intention on the part of the vendors who execute the deed, made, on the face of it, for the purpose of inducing the several purchasers to buy, is as good a covenant as could be made by the most formal words.—KAY, J.

2. —— **Annoyance and Grievance.**

TOD-HEATLY *v.* BENHAM, **40 Ch. D. 92.** Many things may be, within the meaning of this clause, an annoyance or grievance although no pecuniary loss can be shewn.

93. Having regard to the added words "or to the inhabitants of the neighbouring or adjoining houses," the covenant, in my opinion, is not confined to property belonging to the lessor as reversioner, but applies to other property also.—COTTON, L.J.

3. —— **Collateral Agreement.**

MARTIN *v.* SPICER, **34 Ch. D. 12.** If a man makes a representation that property is subject to covenants affecting it permanently, and he does so in order to induce a person to buy part of such property, and the person buys on the faith of such representation, the representation amounts to a contract by the vendor that he will not do anything to prevent the property from continuing what he has represented it to be. . . . It does not follow that you cannot make a collateral contract at the same time that you make a lease, and in this case it appears to me that the correspondence which we have had read plainly makes a collateral contract.—LINDLEY, L.J.

4. —— **Estate sold in Lots.**

KING *v.* DICKESON, **40 Ch. D. 599.** Subject to the right of the owners of the other lots to compel the observance of the restrictive covenant, there was nothing to prevent the owner of Lot 258 from building upon it in any way he pleased, provided that none

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RESTRICTIVE COVENANT—*continued.*

of the owners of the other lots objected to his doing so.—NORTH, J.

See Lessor and Lessee. 3.
Public-House.
Vendor and Purchaser. 6.
Vendor and Purchaser. 7.

RESULTING TRUST.

See Creditors' Deed.
Transfer of Stock into Joint Names.

RETAINER.

See Administration. 1.
Administration. 4.
Executor. 5.
Executor. 6.
Executor. 7.
Executor. 8.
Solicitor. 7.

RIPARIAN OWNER—Rights of.

BOOTH *v.* RATTÉ, **15 App. Cas. 188.** A riparian owner is at liberty to construct and moor to his bank a floating wharf and boat-house, the same not being an obstruction to the navigation.

RIPARIAN RIGHTS—River Tidal and Navigable.

NORTH SHORE RAILWAY COMPANY *v.* PION, **14 App. Cas. 617.** In the case of a non-navigable river the riparian owner is proprietor of the bed of the river *ad medium filum aquæ*, which, in the case of a navigable river such as the St. Charles, belongs to the Crown.—EARL OF SELBORNE.

It has now been settled that the right to the enjoyment of a natural stream of water on the surface, *ex jure naturæ*, belongs to the proprietor of the adjoining lands, as a natural incident to the right to the soil itself, and that he is entitled to the benefit of it, as he is to all the other natural advantages belonging to the land of which he is the owner. He has the right to have it come to him in its natural state, in flow, quantity, and quality, and to go from him without obstruction, upon the same principle that he is entitled to the support of his neighbour's soil for his own in its natural state.—LORD WENSLEYDALE, EARL OF SELBORNE.

RIVER.

See Riparian Rights.

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S.

SALE AND HIRE AGREEMENT.

See Bill of Sale. 13.

SALVAGE.

1. ——

THE WEBRA, **12 P. D. 53.** The principles by which the Court is guided in awarding salvage:—It looks to (1) the value of the property saved; (2) the actual perils from which saved.—THE PRESIDENT (SIR JAMES HANNEN).

2. —— **Judicial Discretion.**

OWNERS OF THE THOMAS ALLEN *v.* GOW. THE THOMAS ALLEN, **12 App. Cas. 121.** Their Lordships have felt the hesitation which has so often been expressed at this Board in interfering with the judicial discretion upon a mere question of amount, but their Lordships are of opinion that in this case the difference between the sum which they think would be a liberal remuneration for the services rendered and that which has been awarded is so large as to require correction.—SIR J. HANNEN.

3. —— **Success.**

THE CHEERFUL, **11 P. D. 5.** Unless the salvors by their services conferred actual benefit on the salved property, they are not entitled to salvage remuneration.—DR. LUSHINGTON; BUTT, J.

See Owner.

SATISFACTION.

See Accord and Satisfaction.
Double Portion.
Will. 9.

SAVINGS BANKS ACT, 1887.

SCHEME OF ARRANGEMENT.

See Bankruptcy. 11.

SCOTLAND—Jurisdiction—Arrestment to found.

NORTH *v.* STEWART, **15 App. Cas. 464.** As I understand the law of Scotland, in order to found jurisdiction it is necessary that there should exist in Scotland a subject-matter belonging to the foreigner capable of being arrested, and that this condition of things should continue down to the time when the suit is commenced by process. When once these conditions are satisfied the

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SCOTLAND—*continued.*

arrestment to found the jurisdiction ceases to have further effect; it no longer binds the property or in any way restrains future dealings with it.—LORD HERSCHELL.

SEARCHES.

See Land Charges Registration and Searches Act, 1888.

SECOND ACTION FOR SAME MATTER.

M'CABE *v.* BANK OF IRELAND, **14 App. Cas. 415.** The rule is established that, where a plaintiff, having failed in one action, commences a second action for the same matter, the second action must be stayed until the costs of the first action have been paid. —LORD HERSCHELL.

SECRETARY OF COMPANY.

See Company. 7.

SECURITY FOR COSTS OF APPEAL.

POOLEY'S TRUSTEE *v.* WHETHAM, **33 Ch. D. 78.** The rule has always been that applications for security for costs must be made promptly.

79. It is urged that the applicant had not until the issue of the executions any sufficient evidence that the appellant was insolvent. If that had been made out, the application, even at this late stage, might have been successful.—COTTON, L.J.

SEPARATE ACTIONS—One Solicitor—Costs.

GRIEB'S CASE, **45 Ch. D. 606.**

SEPARATE DEFENCES.

See Costs. 2.

SEPARATE ESTATE.

See Married Woman. 5.
Married Woman. 6.
Married Woman. 7.

SEPARATION.

See Divorce. 5.

SEPARATION AGREEMENT.

See Husband and Wife. 6.

SEQUESTRATION.

PRATT *v.* INMAN, **43 Ch. D. 179.** Sequestration unquestionably was and is a process of contempt. Sequestration was issued to compel a man formerly to put in an answer and the like, and sequestration also went to compel (in the words of Lord Hardwicke) a defendant to perform a duty, such as the payment of money, and such, of course, as the payment of money into Court.—CHITTY, J.

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SERVANT.

See Master and Servant. 1.

SERVICE OF WRIT.

1. —— **Corporation.**

HAGGIN *v.* COMPTOIR D'ESCOMPTE DE PARIS, **23 Q. B. D. 522.** When the foreign corporation is substantially carrying on their business at an office in this country, it must be considered as resident here, and liable to be served with writs in the English Courts.—COTTON, L.J.

2. —— **Foreign Partnership carrying on Business in England.**

RUSSELL *v.* CAMBEFORT, **23 Q. B. D. 528.** There is a distinction between a corporation and a private partnership. A corporation is a creation of law, and can only be said to reside in the place where it carries on business. Therefore a foreign corporation, which carries on business in this country, has a legal existence here, and unless it can be shewn that it stands in a different position from an English corporation, it must be treated as an English corporation would be. In my opinion it cannot be said that a private partnership, or its members, can be considered as resident in this country simply because they are carrying on business here.—COTTON, L.J.

SERVICE OUT OF JURISDICTION.

In re ANGLO-AFRICAN STEAMSHIP COMPANY, **32 Ch. D. 351.** The question whether service can be made out of the jurisdiction must depend upon a statute, or rules having the force of a statute.—LINDLEY, L.J.

SETTLED LAND ACTS (AMENDMENT ACT), 1887.

SETTLED LAND ACT, 1890.

To amend the Settled Land Acts, 1882 to 1889.

SETTLEMENT.

1. —— **Agency of Wife's Father.**

TUCKER *v.* BENNETT, **38 Ch. D. 17.** A father living on affectionate terms with his daughter is the proper person to recommend and advise her, and her natural agent in matters relating to the preparation of her marriage settlement, and in my opinion there is no occasion for any independent legal advice beyond that of the family solicitor.—LOPES, L.J.

2. —— **Collaterals—Volunteers.**

In re CAMERON AND WELLS, **37 Ch. D. 36.** Collaterals, generally speaking, are not within the consideration for a marriage settle-

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SETTLEMENT—*continued.*

ment; and when it is said that collaterals are not within the marriage consideration, this is, in truth, an expansion of the phrase that no consideration moves from the collaterals, and therefore, so far as they are concerned, the interest given by the settlement to them is by way of voluntary gift.—KAY, J.

3. —— **Covenant to settle after-acquired Property—Volunteer claiming benefit of Covenant—Equity.**

In re ANTIS. CHETWYND *v.* MORGAN. MORGAN *v.* CHETWYND, **31 Ch. D. 605.** Equity, no doubt, looks on that as done which ought to be done; but this rule, although usually expressed in general terms, is by no means universally true. Where the obligation to do what ought to be done is not an absolute duty, but only an obligation arising from contract, that which ought to be done is only treated as done in favour of some person entitled to enforce the contract as against the person liable to perform it.—LINDLEY, L.J.

4. —— **Prohibition against Alienation—Repugnant Condition.**

CORBETT *v.* CORBETT, **14 P. D. 11.** I think in this case that this proviso giving over the property in the event of alienation, being inconsistent with the absolute estate originally given, is bad.—COTTON, L.J.

12. I cannot at all accede to the suggestion that in cases of this description there is any difference between equitable and legal estates.—LINDLEY, L.J.

5. —— **Of Settlor's own Property.**

In re DETMOLD. DETMOLD *v.* DETMOLD, **40 Ch. D. 587.** A settlement by a man of his own property upon himself for life, with a clause forfeiting his interest in the event of alienation, or attempted alienation, has never, so far as I know, been defeated in favour of a particular alienee; it has only been defeated in favour of the settlor's creditors generally, on the ground that it would be a fraud on the bankrupt law.—NORTH, J.

See Poor Law.

SEVERING PLEADINGS.

See Costs. 11.

SHARES—Blank Endorsement—Estoppel—Banker.

COLONIAL BANK *v.* CADY AND WILLIAMS, **15 App. Cas. 278.** According to the custom of bankers and stockbrokers, both in this country and America, a certificate, with the endorsed transfer

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SHARES—*continued.*

executed in the manner already described, is regarded as being in "order"; and its delivery, in exchange for value received, is understood to be sufficient to pass the full title of the registered owner. Even when the delivery has been fraudulent, as in the present case, the Supreme Court of New York has held that the registered owner cannot reclaim the document from a holder who has given valuable consideration, in good faith and without notice of the fraud. But it is necessary to observe that the decision of the Court did not attribute to the instrument any privilege or negotiability in the legal sense of that term. It was based (to use the language of Mr. Carter, one of the appellant's witnesses) "upon the circumstance that the registered owner has so dealt with that certificate as to lead the purchaser for value to believe that he was taking a good title to it. In other words, the foundation rests in the principle of estoppel." Thus far the principles of American appear to me to be in harmony with the principles of English law. According to the latter, the true owner of such documents of title is not held to have parted with his interest in them except where he intended to pass such interest, or where, by reason of some act or omission, he has estopped himself from saying that he did not intend to pass it. . . . Had the transfers been executed by John Michael Williams, and the certificates thereafter sent by him to Thomas, Sons & Co., for safe custody, I should not have hesitated to hold that Blakeway, though acting fraudulently, was nevertheless placed by his act in a position to give a title to an honest purchaser which his employer could not dispute. But that is not the case with which we have to deal. The transfer was signed by the respondents, who were not the registered owners of the shares and were not named in the certificate.—LORD WATSON.

281. I think anyone seeing that the shares were in the name of John Michael Williams, that the indorsements were not by him, but by two others, must have known that it might be intended, rightly or wrongly, that the shares should be sold, or that money should be borrowed on them, or that the signatures were those of persons representing Williams, and intending that the shares should be transferred into the names of the persons so signing; any one of these three intentions is possible, in fact. If so, there can be no estoppel to say the last was meant. It is not contrary to what they have said by their indorsement. Further, I think the circumstances are such as to have called on

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SHARES—*continued.*

persons lending money on these documents to inquire as to the right of the borrower to pledge.—LORD BRAMWELL.

286. A most important piece of evidence was adduced at the trial bearing upon this point. It was proved that it was the usual course where executors desire registration in their own name to forward the certificates, with the indorsement signed by them, and acknowledged, with a duly authenticated copy of the will, to the New York office, and that on such certificates and copy of the will being filed, new certificates in the names of the executors are returned to them. It thus appears that certificates, signed as those now in controversy were, may be in the hands of brokers for either of two purposes, to effect a transfer or to complete the title of the executors. Their possession is just as consistent with the one purpose as the other.—LORD HERSCHELL.

See Company. 4.
Company. 12.
Company. 21.
Company. 22.

SHELLEY'S CASE, RULE IN.

RICHARDSON *v.* HARRISON, **16 Q. B. D. 104.** There is a well-known doctrine about the rule in *Shelley's Case*, that where the two estates, which otherwise would be joined together, as it were, by reason of the rule, are, the one of them legal, and the other equitable, they cannot be joined, and the rule does not apply: the estates must be both equitable or both legal.—LORD ESHER, M.R.

SHERIFF—Execution.

In re WOODHAM. *Ex parte* CONDER, **20 Q. B. D. 42.** The sheriff is bound to levy and sell, and if he thinks that any expenses ought to be incurred while the goods are in his possession, he can get authority from the execution creditor to incur the expenses, and if he does so, he can recover the amount from the execution creditor, or if authority is refused he need not incur the expenses. So also he may get authority from the execution debtor, and may recover the amount of the expenses from him; but there is nothing in any statute shewing any duty on the part of the sheriff to incur such expenses of his own motion.—CAVE, J.

SHERIFFS ACT, 1887.

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SHIP.

1. ——

NIELSEN *v.* WAIT, **16 Q. B. D. 72.** "Running days" are days during which, if the ship were at sea, she would be running; *i.e.*, every day, day and night.—LORD ESHER, M.R.

2. ——

HENDERSON BROTHERS *v.* MERSEY DOCKS AND HARBOUR BOARD, **19 Q. B. D. 129.** The meaning of the following expressions discussed:—

"clearing inwards,"
"clearing outwards,"
"trading inwards,"
"trading outwards"
"entering,"
"sailing" or "outward bound,"
"clearance inwards,"
"clearance outwards."

3. —— **Action in rem.**

THE "LONGFORD," **14 P. D. 37.** An action *in rem* is not the same as an action *in personam*, though it may indirectly affect the owners of, or persons interested in, the ship. The word "action" mentioned in the section in question was not applicable, when the Act was passed, to the procedure of the Admiralty Court. Admiralty actions were then called "suits" or "causes;" moreover, the Admiralty Court was not called one of His Majesty's Courts of Law. It originally derived its jurisdiction from the Lord High Admiral and not from the King.—LORD ESHER, M.R.

4. —— **Bill of Lading.**

JAY *v.* ROBINSON, **25 Q. B. D. 475.** "Negligence or default of pilot, master, mariners, engineers, or other persons in the service of the ship, whether in navigation of the ship or otherwise, loss or damage arising from rain, storage or contact with other goods being excepted, and the ship not being liable for any consequence of the causes herein excepted, however caused or originated."

477. It has been *held*, that in constructing a clause in a bill of lading, exempting a shipowner from liability, which clause is ambiguous and of doubtful meaning, the construction most in favour of the shipper, and not such as is most in favour of the shipowner, for whose benefit the exemptions are framed, is to be applied. I do not understand this to mean that the true canon of construction

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SHIP—*continued.*

is not to be applied, but that, when applied, if ambiguity or doubt still exists, the construction is to be in favour of the shipper rather than of the shipowner.—A. L. SMITH, J.

5. —— **Bill of Lading—Master—Broker.**

STUMORE, WESTON & Co. *v.* BREEN, **12 App. Cas. 702.** The date, or time of signing, is a material part of a bill of lading; and that is obviously the case, because, according to the tenor of the document, the insertion of a particular date amounts to a distinct representation that the goods had actually been put on board before the time specified. Neither was it disputed that it is the special duty of the master of the ship to attest, by his signature, the date as well as the fact of shipment.—LORD WATSON.

704. According to the ordinary course of business, the broker prepares the bills of lading, because they contain the terms of the contract of carriage; and these are matters as to which he is the sole representative of the shipowner, and with which the master has no concern. But the fact of the shipment of the goods to be carried, and the date of shipment, are matters within the province not of the broker, but of the master.—LORD WATSON.

6. —— **Bill of Lading—Perils of the Sea.**

WILSON SONS & Co. *v.* OWNERS OF CARGO PER THE "XANTHO," **12 App. Cas. 509.** I think it clear that the term "perils of the sea" does not cover every accident or casualty which may happen to the subject-matter of the insurance on the sea. It must be a peril "of" the sea. Again, it is well settled that it is not every loss or damage of which the sea is the immediate cause that is covered by these words. They do not protect, for example, against that natural and inevitable action of the winds and waves, which results in what may be described as wear and tear. There must be some casualty, something which could not be foreseen as one of the necessary incidents of the adventure. The purpose of the policy is to secure an indemnity against accidents which may happen, not against events which must happen.—LORD HERSCHELL.

7. —— **Charter-party—Bill of Lading differing from Terms of Charter-party.**

RODOCANACHI *v.* MILBURN, **18 Q. B. D. 75.** Although as between the shipowners and the charterers, the bill of lading is only a receipt for the goods, it will be the contract upon which the holder of the bill of lading to whom it is indorsed must rely as between himself and the shipowner.—LORD ESHER, M.R.

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SHIP—*continued.*

8. —— **Charter-party—Excepted Perils—"Dangers and Accidents of Navigation."**

SAILING SHIP "GARSTON" COMPANY *v.* HICKIE, BORMAN AND COMPANY, **18 Q. B. D. 21.** A loss caused by a collision brought about by the negligence of either vessel is not a "peril of the sea" within the meaning of that expression in an ordinary charter-party. But the charter-party here in question, like many others, contains in addition to the exception of perils of the sea the expression "all dangers or accidents of navigation." What is the true construction of that expression? . . . A peril of the sea is a peril caused by some action of the elements, but what is a peril of navigation? Navigation is the act of navigating ships. . . . One class of dangers which would most readily occur to the minds of persons accustomed to the sea would be the dangers caused by the negligent navigation of other ships. This is perhaps the principal and most obvious kind of danger which may happen at sea other than those included in the expression "perils of the sea." . . . Though not a peril of the sea, it is, in my opinion, clearly a danger of navigation. If the loss were occasioned by the negligent navigation of the ship carrying the cargo I do not think that would be a danger of navigation within the words; that would be a loss brought about by the act or default of the shipowner's servants for which he would be liable. It would be a danger not of navigation but caused by his employing inefficient servants.—LORD ESHER, M.R.

9. —— **Collision—Damages.**

THE "CITY OF PEKING," **15 App. Cas. 442.** There is no doubt as to the rule of law according to which compensation is to be assessed in cases of this nature, where a partial loss is sustained by collision. The rule is *restitutio in integrum.* The party injured is entitled to be put, as far as practicable, in the same condition as if the injury had not been suffered. It does not follow as a matter of necessity that anything is due for detention of a vessel whilst under repair. In order to entitle a party to be indemnified for what is termed in the Admiralty Court a consequential loss resulting from the detention of the vessel, two things are absolutely necessary—actual loss and reasonable proof of the amount. —SIR BARNES PEACOCK.

10. —— **Collision—Damages—Negligence.**

THE "BERNINA," **12 P. D. 61.** The question raised is, what is the law applicable to a transaction in which a plaintiff has been injured by negligence, and in the course of which transaction

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SHIP—*continued.*

there have been negligent acts or omissions by more than one person?

Upon many points as to such a transaction the common law is clear. (1) If no fault can be attributed to the plaintiff, and there is negligence by the defendant and also by another independent person, both negligences partly directly causing the accident, the plaintiff can maintain an action for all the damages occasioned to him against either the defendant or the other wrongdoer. (2) If in the same case the negligence is partly that of the defendant personally and partly that of his servants, the plaintiff can maintain an action either against the defendant or his servants. (3) If in the same case the negligence is that of the defendant's servants, though there be no personal negligence by the defendant, the plaintiff can maintain an action either against the defendant or his servants. (4) If in the same case the negligence, though not that of the defendant personally, or of a servant of the defendant, consists in an act or omission by another, done or omitted to be done in the way in which it is done or omitted to be done by the order or direction or authority of the defendant, the plaintiff can maintain an action either against the defendant or the person personally guilty of the negligence. (5) If, although the plaintiff has himself or by his servants been guilty of negligence, such negligence did not directly partly cause the accident, as if, for example, the plaintiff or his servants having been negligent, the alleged wrongdoers might by reasonable care have avoided the accident, the plaintiff can maintain an action against the defendant. (6) If the plaintiff has been personally guilty of negligence which has partly directly caused the accident, he cannot maintain an action against any one. (7) If, although the plaintiff has not been personally guilty of negligence, his servants have been guilty of negligence which has partly directly caused the accident, the plaintiff cannot maintain an action against any one. (8) If, although the defendant or his servants has or have been guilty of negligence, the plaintiff or his servants could, by reasonable care, have avoided the accident, the plaintiff cannot maintain an action against any one.—Lord Esher, M.R.

89. The cases which give rise to actions for negligence are primarily reducible to three classes as follows:—

1. A., without fault of his own, is injured by the negligence of B., then B. is liable to A.

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SHIP—*continued.*

2. A. by his own fault is injured by B. without fault on his part, then B. is not liable to A.

3. A. is injured by B. by the fault more or less of both combined, then the following further distinctions have to be made:—(*a*) if, notwithstanding B.'s negligence, A., with reasonable care, could have avoided the injury, he cannot sue B.; (*b*) if, notwithstanding A.'s negligence, B., with reasonable care, could have avoided injuring A., A. can sue B.; (*c*) if there has been as much want of reasonable care on A.'s part as on B.'s, or, in other words, if the proximate cause of the injury is the want of reasonable care on both sides, A. cannot sue B. In such a case, A. cannot with truth say that he has been injured by B.'s negligence, he can only with truth say that he has been injured by his own carelessness and B.'s negligence, and the two combined give no cause of action at common law. This follows from the two sets of decisions already referred to. But why in such a case the damages should not be apportioned, I do not profess to understand. However, as already stated, the law on this point is settled, and not open to judicial discussion. If now another person is introduced the same principles will be found applicable. Substitute in the foregoing cases B. and C. for B., and unless C. is A.'s agent or servant there will be no difference in the result except that A. will have two persons instead of one liable to him. A. may sue B. and C. in one action, and recover damages against them both; or he may sue them separately and recover the whole damage sustained against the one he sues.—LINDLEY, L.J.

11. —— **Collision—Damages—Remoteness.**

THE "ARGENTINO," **13 P. D. 200.** Speaking generally as to all wrongful acts whatever arising out of tort or breach of contract, the English law only adopts the principle of *restitutio in integrum*, subject to the qualification or restriction that the damages must not be too remote, that they must be, in other words, such damages as flow directly and in the usual course of things from the wrongful act. To these the law superadds in the case of a breach of contract (or to speak according to the view taken by some jurists, the law includes under the head of these very damages, where the case is one of breach of contract) such damages as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of its breach. With this single modification

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SHIP—*continued.*

or exception which is one that applies only to cases of breach of contract, the English law only permits the recovery of such damages as are produced immediately and naturally by the act complained of.—BOWEN, L.J.

12. —— **Collision—Moderate Speed—Regulations.**

THE "EBOR," **11 P. D. 27.** Moderate speed meant moderate according to circumstances.—LORD ESHER, M.R.

29. The Regulations—as we have repeatedly pointed out—are not made only to prevent collisions, but to prevent the danger of collision.—LORD ESHER, M.R.

13. —— **Co-ownership—Action of Restraint.**

THE "ENGLAND," **12 P. D. 33.** The general principle in regard to the right of a part owner who dissents from the way in which the ship is employed is clear. He is entitled to bail in the value of his shares; he then incurs no liabilities and he obtains no profits. —THE PRESIDENT (SIR J. HANNEN).

14. —— **General Average.**

ROYAL MAIL STEAM PACKET CO. *v.* ENGLISH BANK OF RIO DE JANEIRO, **19 Q. B. D. 373.** Where bullion was thrown overboard to escape capture by an enemy the loss was not general average: the jettison in case of pursuit by an enemy, in order to constitute a case of general average, must be for the purpose of saving ship and cargo by lightening her and increasing her speed.—WILLS, J.

15. —— **General Average—Jettison—Right to Contribution—Remedies—Lien on Goods salved.**

STRANG, STEEL & CO. *v.* A. SCOTT & CO., **14 App. Cas. 606.** Each owner of jettisoned goods becomes a creditor of ship and cargo saved, and has a direct claim against each of the owners of ship and cargo, for a *pro rata* contribution towards his indemnity, which he can enforce by a direct action.—LORD WATSON.

Again, it is settled law that, in the case of a general ship, the owner of goods sacrificed for the common benefit has a lien upon each parcel of goods salved belonging to a separate consignee for a due proportion of his individual claim. The cargo not being in his possession or subject to his control, his right of lien can only be enforced through the ship-master, whom the law of England, following the principles of *Lex Rhodia*, regards as his agent for that purpose. The duty being imposed by law upon the master, he is answerable for its neglect.—LORD WATSON.

607. The right to detain for contribution is derived from the

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SHIP—*continued.*

civil law, which also imposes on the master of the ship the duty of having the contribution settled and of collecting the amount, and the usage has always been substantially in accordance with that law, and has become part of the common law of England.—LUSH, L.J.; LORD WATSON.

608. There are two well-established exceptions to the rule of contribution for general average, which it is necessary to notice.

When a person who would otherwise have been entitled to claim contribution has, by his own fault, occasioned the peril which mediately gave rise to the claim, it would be manifestly unjust to permit him to recover from those whose goods are saved, although they may be said, in a certain sense, to have benefited by the sacrifice of his property. In any question with them he is a wrongdoer, and, as such, under an obligation to use every means within his power to ward off or repair the natural consequences of his wrongful act. He cannot be permitted to claim either recompense for services rendered, or indemnity for losses sustained by him, in the endeavour to rescue property which was imperilled by his own tortious act, and which it was his duty to save.

The second exception is in the case of deck cargo. According to the rules of maritime law, the placing of goods upon the deck of a sea-going ship is improper stowage, because they are hindrances to the safe navigation of the vessel; and their jettison is therefore regarded, in a question with the other shippers of cargo, as a justifiable riddance of incumbrances which ought never to have been there, and not as a sacrifice for the common safety. But the owner of deck goods jettisoned, though not entitled to general contribution, may nevertheless have a good claim for indemnity against the master and owners who received his goods for carriage upon deck; and the exception does not apply, either (1) in those cases where, according to the established custom of navigation, such cargoes are permitted, or (2) in any case where the other owners of cargo have consented that the goods jettisoned should be carried on the deck of the ship.—LORD WATSON.

16. —— Maritime Lien—Towage.

WESTRUP *v.* GREAT YARMOUTH STEAM CARRYING COMPANY, **43 Ch. D. 245.** I have the considered opinion of Lord Esher and Lords Justices Bowen and Fry, confirmed by Lord Bramwell in the House of Lords, that towage on the high seas does not give a maritime lien.—KAY, J.

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SHIP—*continued.*

17. —— **Necessaries—Maritime Lien.**

NORTHCOTE *v.* OWNERS OF THE "HENRICH BJÖRN." THE "HENRICH BJÖRN," **11 App. Cas. 278.** Persons who equip or provide necessaries to a ship in an English port have no preference over other creditors, and have no lien upon the ship.—LORD WATSON.

18. —— **"Perils of the Seas"—"Dangers and Accident of the Seas."**

HAMILTON, FRASER, & Co. *v.* PANDORF & Co., **12 App. Cas. 526.** I think the definition of Lopes, L.J., very good: "It is a sea damage, occurring at sea, and nobody's fault." What is the "peril"? It is that the ship or goods will be lost or damaged; but it must be "of the sea." "Fire" would not be a peril of the sea; so loss or damage from it would not be insured against by the general words. So of lightning. In the present case the sea has damaged the goods.—LORD BRAMWELL.

19. —— **"Trading Inwards."**

MERSEY DOCKS AND HARBOUR BOARD *v.* HENDERSON BROTHERS, **13 App. Cas. 601.** "Trading inwards" does not mean a trading vessel going into a port, but means that not only the vessel is to be going in, but the trading and not the vessel is to be inwards, a trading inwards by way of import, as distinguished from trading outwards by way of export.—LORD HALSBURY, L.C.

See Admiralty.

SHORTHAND NOTES.

1. ——

In re HILLEARY AND TAYLOR, **36 Ch. D. 267.** This Court has considered it desirable to prevent unnecessary expense in taking shorthand notes, and therefore refuses to allow the costs of them other than shorthand notes of the judgment of the judge whose decision is under appeal, except in special cases. . . . I do not think that a judge has jurisdiction to order adversely that a shorthand writer should be employed. It is part of the duty of the judge and of the counsel to take notes of the evidence, and I think it would be wrong to hold that either a taxing master, or a chief clerk, or a judge, can order shorthand notes of it to be taken. But here the taxing master stated his opinion that the best course would be to have a shorthand note taken, and both parties acquiesced in this view.—COTTON, L.J.

2. ——

In re MEDLAND. ELAND *v.* MEDLAND, **41 Ch. D. 493.** The costs of the shorthand writer's notes of the judgment are always to be allowed without any special application.—COTTON, L.J.

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SOLICITOR.

1. —— **Agency—London Agent of Country Solicitor.**

WARD *v.* LAWSON, **43 Ch. D. 360.** In the usual case, the London agent has no claim at all against the client, but he can sue the country solicitor for what is due to him on the arrangement usually regulating the distribution of moneys received or charged for in respect of bills of costs. . . . The London agent is entitled to all sums paid by him out of pocket. . . . The London agent is entitled only (apart from the charges for what he has paid out of pocket) to half the amount of those charges which are called profit charges—that is, those charges which do not involve any expenditure of money by him. . . . The London agent has nothing to do with the profit made by the solicitor, nor, unless there is some special arrangement, is he in any way implicated in any loss which the country solicitor may suffer by reason of the client not being able to pay him.

Now, is there any arrangement here . . . which gives the defendant here a claim to half the profit? . . . The agreement only departed from the usual agency terms in this, that the defendant was not to sue the plaintiff until the plaintiff had obtained payment of his bill of costs from the company.—COTTON, L.J.

2. —— **Bill of Costs—Interest.**

BLAIR *v.* CORDNER, **19 Q. B. D. 516.** A solicitor may charge interest at 4 per cent. per annum on his disbursements and costs from the expiration of one month from demand from the client.—LORD ESHER, M.R.

3. —— **Lien.**

NORTH *v.* STEWART, **15 App. Cas. 463.** In the Courts of Common Law, a solicitor's lien upon costs decreed does not, until it is converted into a charge by virtue of the statute, prevent their attachment by other persons having claims against the judgment creditor. . . . Section 28 of 23 & 24 Vict. c. 127, enacts that "all conveyances and acts done to defeat, or which shall operate to defeat, such charge or right, shall, unless made to a *bonâ fide* purchaser for value without notice, be absolutely void, and of no effect as against such charge or right."—LORD WATSON.

4. —— **Lien.**

ROSS *v.* BUXTON, **42 Ch. D. 200.** The cases divide themselves into two classes. The Court will exercise this equitable inter-

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SOLICITOR—*continued.*

ference where the solicitor has given the opposite party, or his solicitor, notice of his lien, and that he claims the amount payable to his client, to be paid to him in the first instance; in which case the opposite party will, at his peril, pay the client or release the claim, or compromise it without the assent of the solictor. . . . With regard to the other class of cases, so the Court will exercise it, though no such notice has been given, in cases where it is clearly made out that there is some collusion or fraudulent conspiracy between the parties to cheat the solicitor of his costs.—LINDLEY, L.J.; STIRLING, J.

5. —— **Lien—New Solicitor—Costs.**

In re WADSWORTH. RHODES *v.* SUGDEN, **34 Ch. D. 158.** It appears on principle that the solicitor who had last conducted the suit was the person who ought to take his costs first.—LORD HATHERLEY; KAY, J.

See Trustees. 7.

6. —— **Privilege.**

BURSILL *v.* TANNER, **16 Q. B. D. 5.** It is not everything that solicitors learn in the course of their dealings with clients that is privileged from disclosure. The privilege extends only to confidential communications.—COTTON, L.J.

7. —— **Retainer.**

In re HERBERT, **34 Ch. D. 505.** It is not open on a common order to tax to dispute the retainer as to the whole bill, but it is to do so as to any particular items, or as to any head of charges.—NORTH, J.

8. —— **Transfer of Goodwill.**

JAMES *v.* JAMES, **22 Q. B. D. 675.** Doubt raised whether a transfer of the goodwill would pass the right to the custody of the client's papers.

9. —— **Trustee—Costs—Acting for other Trustees.**

In re CORSELLIS. LAWTON *v.* ELWES, **34 Ch. D. 681.** Where there is work done in a suit, not on behalf of the trustee, who is a solicitor, alone, but on behalf of himself and a co-trustee, the rule will not prevent the solicitor or his firm from receiving the usual costs, if the costs of appearing for and acting for the two have not increased the expense—that is to say, if the trustee himself has not added to the expense which would have been incurred if he or his firm had appeared only for his co-trustee. For that

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SOLICITOR—*continued.*

there is an obvious reason—that it is not the business of a trustee, although he is a solicitor, to act as solicitor for his co-trustee.—COTTON, L.J.

10. —— Trustee in Bankruptcy—Remuneration.

In re WAYMAN. *Ex parte* OFFICIAL RECEIVER, **24 Q. B. D. 68.** The solicitor's commission, or per centage, as trustee under sect. 72, should be fixed at such a rate as will cover his reasonable professional charges.

See Company. 26.
Discovery. 5.
Mortgage. 9.
Trust. 1.
Trust. 2.

SOLICITOR AND CLIENT.

1. ——

POOLEY'S TRUSTEE *v.* WHETHAM, **33 Ch. D. 118.** Justice ought to be dealt out to a man, whether he is a solicitor or a layman.—PEARSON, J.

2. —— Mortgage to Solicitor, Costs of.

In re ROBERTS, **43 Ch. D. 54.** There was no mortgagee who had to pay to any solicitor. The mortgagee has no solicitor to prepare the mortgage, for he does the work himself, and, therefore, he cannot charge any costs, because they never existed at all.—KAY, J.

3. —— Purchase by Solicitor.

LUDDY'S TRUSTEE *v.* PEARD, **33 Ch. D. 520.** If he purchases from his client in a matter totally unconnected with what he was employed on before, no doubt an attorney may purchase from one who has been his client just as any stranger may do, honestly telling the truth and without any fraudulent concealment, but being in no respect bound to do more than any other purchaser would do.—KAY, J.

See Statute of Limitations. 1.

SOLICITORS ACT, 1888.

SOLICITORS REMUNERATION ACT, 1881.

See Costs. 14.
Costs. 15.

SPECIAL POWER.

See Will. 12.

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SPECIFIC PERFORMANCE.

1. —— **Damages.**

ROWE *v.* SCHOOL BOARD FOR LONDON, **36 Ch. D. 619.** Judgment for specific performance with costs was given, but no damages, as the contract was for sale of real estate.

2. —— **Misdescription.**

In re CONTRACT BETWEEN FAWCETT AND HOLMES, **42 Ch. D. 156.** Any error, mis-statement, or omission in the particulars shall not annul the sale, but if it is pointed out before completion, compensation shall be allowed. Such a condition is not applicable to every misdescription; it would not apply to a fraudulent one, nor to one the compensation in respect of which could not be ascertained. If the error is of such consequence that it may be reasonably supposed that but for the misdescription the purchaser would not have bought, the error is not within the condition.—LORD ESHER, M.R.

159. The principle is, that if he gets substantially that for which he bargains, he must take a compensation for a deficiency in the value.—SIR W. GRANT; COTTON, L.J.

See Vendor and Purchaser. 3.

SPES SUCCESSIONIS.

See Contingent Title.

STAKEHOLDER.

See Debtor and Creditor.

STATUTE OF FRAUDS.

1. —— **Agreement not to be Performed within a Year.**

MCGREGOR *v.* MCGREGOR, **21 Q. B. D. 431.** The effect of the decisions is that, if the contract can by possibility be performed within the year, the statute does not apply.—LINDLEY, L.J.

432. An agreement that is not to be performed within the space of one year from the making thereof, means in the Statute of Frauds an agreement which appears from its terms to be incapable of performance within the year.—BOWEN, L.J.

2. —— **Sufficient Memorandum—Two independent Documents—Parol Evidence to connect.**

OLIVER *v.* HUNTING, **44 Ch. D. 209.** In *Long* v. *Millar*, Bramwell, L.J., gives an illustration: "Suppose that A. writes to B., saying that he will give £1000 for B.'s estate, and at the same time states the terms in detail, and suppose that B. simply writes back in return, 'I accept your offer.' In that case, there may be an identification of the documents by parol evidence, and it may be shewn that the offer alluded to by B. is that made by A.,

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STATUTE OF FRAUDS—*continued.*

without infringing the Statute of Frauds, sect. 4, which requires a note or memorandum in writing." If that is sound, which I take it to be, according to other cases, and according to the convictions of judges in older cases which are introduced into the old law, it is difficult, perhaps, to say where parol evidence is to stop; but substantially it never stops short of this, that wherever parol evidence is required to connect two written documents together, then that parol evidence is admissible. You are entitled to rely upon a written document which requires explanation.—KEKEWICH, J.

See Company. 5.

STATUTE OF LIMITATIONS.

1. ——

BECK *v.* PIERCE, **23 Q. B. D. 323.** We cannot think that the reasoning in *Whitehead* v. *Lord* applies to miscellaneous work done by a solicitor for his client, although it may apply to such continuous work as bringing and prosecuting an action.—LINDLEY, L.J.

2. —— **Acknowledgement of Debt—Implied Promise to Pay.**

CURWEN *v.* MILBURN, **42 Ch. D. 431.** There must be one of these three things to take the case out of the statute: Either there must be an acknowledgment of the debt from which a promise to pay is to be implied; or, secondly, there must be an unconditional promise to pay the debt; or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed.—MELLISH, L.J.; NORTH, J.

See Company. 9.
Promissory Note. 2.

STATUTES—Construction of.

SLATTERY *v.* NAYLOR, **13 App. Cas. 449.** Their Lordships have been referred to cases in which Acts of the legislature would, according to their full literal meaning, operate to take away private property without compensation, and in which Courts of justice have, on account of the extreme improbability that the legislature should have intended such a thing, sought for some secondary meaning to satisfy its expressions, such as was the case of the *Western Counties Railway Company* v. *Windsor and Annapolis Railway Company*, before this Board. But a statute cannot be so construed if it shews an intention to override the private rights in question.—LORD HOBHOUSE.

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STAY OF EXECUTION—Appeal.

OPPERT *v.* BEAUMONT, **18 Q. B. D. 435.** A master has jurisdiction to stay execution on a judgment pending an appeal.—BOWEN, L.J.

See Appeal. 7.

STAYING PROCEEDINGS.

1. ——

In re WICKHAM. MARONY *v.* TAYLOR, **35 Ch. D. 282.** Whenever it can be shewn that a person is proceeding vexatiously in not paying costs which he has been ordered to pay, the Court has jurisdiction to stay the proceedings.—LINDLEY, L.J.

2. —— Frivolous and Vexatious Action.

WILLIS *v.* EARL BEAUCHAMP, **11 P. D. 61.** The Court has undoubted jurisdiction to dismiss an action, when the action is frivolous and vexatious, and an abuse of the process of the Court. —COTTON, L.J.

63. This action ought to be stayed as being a vexatious action within the meaning attached to that word by the Courts, because it can really lead to no possible good.—BOWEN, L.J.

See Costs. 5.

STIFLING PROSECUTION.

See Prosecution, Stifling.

STOP ORDER.

MUTUAL LIFE ASSURANCE SOCIETY *v.* LANGLEY, **32 Ch. D. 460.** When an assignment is made of an interest in a trust fund, part of which is in Court and part in the hands of trustees, the assignee in order to complete his title must, as regards the fund in Court, obtain a stop order, and as regards the fund in the hands of trustees give notice to the trustees.

An incumbrancer who obtains a stop order on a fund in Court does not lose his priority over a previous incumbrancer who has obtained no stop order, by the fact that he had notice of the previous incumbrance at the time of obtaining the stop order, if he had no notice of it when he took his security.—COTTON, BOWEN, FRY, L.JJ.

STOPPAGE IN TRANSITU.

BETHEL *v.* CLARK, **19 Q. B. D. 561.** *Transitus* ends when goods get into the hands of some one who holds them for the purchaser for some other purpose than that of merely carrying them to the destination fixed by the contract.—CAVE, J.

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T.

TENANT FOR LIFE.

1. —— **Remainderman—Leaseholds—Repairs.**

In re COURTIER. COLES *v.* COURTIER, **34 Ch. D. 139.** She (the tenant for life) is not bound to the landlords under the covenants; the trustees are bound, and it is their duty to repair the houses in accordance with the covenants in the leases out of the *corpus* of the estate. There is no rule of law that the tenant for life is bound to do these repairs out of the rents and profits.—COTTON, L.J.

2. —— **Repairs—Remainderman.**

In re HOTCHKYS. FREKE *v.* CALMADY, **32 Ch. D. 416.** What, then, in that state of facts is the right as between the tenant for life and the remainderman? The estate was to be vested in the trustees during the tenancy for life. In my opinion, in a case where trustees have property vested in them under circumstances like these, there is an obligation upon them, for the purpose of properly carrying out and performing their trust with regard to the property, to see that the property does not fall into decay from want of proper repair. But the money must be raised in such a way as not to throw the burthen unfairly either upon the tenant for life or upon the remainderman.—COTTON, L.J.

420. The tenant for life is equitable tenant for life, and the remainderman is not entitled to throw upon her the burthen of keeping the property in repair. I think that is perfectly plain. The remainderman cannot be entitled to throw upon the tenant for life the burthen of the repairs by paying for them out of the rents. It must be done in a mode which is equitable as between the tenant for life and the remainderman, and not so as to throw the whole burden upon either.—LINDLEY, L.J.

TENANTABLE REPAIR.

See Landlord and Tenant. 4.

TENDER.

1. ——

KINNAIRD *v.* TROLLOPE, **42 Ch. D. 615.** It the defendant can maintain this plea, although he will not thereby bar the debt, yet he will answer the action, in the sense that he will recover judgment for his costs of defence against the plaintiff, in which respect

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TENDER—*continued.*

the plea of tender is essentially different from that of payment of money into Court.—LORD WILDE, C.J.; STIRLING, J.

616. If the plea of tender is to be successful at law, two matters are requisite: first, that the defendant must not only make the tender, but must always be ready to perform entirely the contract on which the action is founded; and secondly, that the plea must be accompanied by a payment into Court.—STIRLING, J.

2. —— **Payment into Court—Costs.**

GRIFFITHS *v.* SCHOOL BOARD OF YSTRADYFODWG, **24 Q. B. D. 308.** If the plea of tender is made out, the action ought never to have been brought, and the defendant is entitled to his costs, and in order to get them he is obliged to go to trial and have the issue tried which is raised by the plea of tender.—WILLS, J.

THIRD PARTY.

1. ——

In re SALMON. PRIEST *v.* UPPLEBY, **42 Ch. D. 363.** I think the proper course was for the plaintiff to serve the defendant, who was directly affected by the appeal, and then the defendant if he wished to retain his rights over against the third parties should apply to the Court of Appeal for leave to serve them. The scheme of the rules appears to me to be to make the proceeding against the third party an independent proceeding in which the defendant is to be the actor.—FRY, L.J.

2. —— **Indemnity—Costs of Defence which Failed.**

BLORE *v.* ASHBY, **42 Ch. D. 682.** The third party held liable to pay the costs of the third party proceedings between him and the defendant; but the defendant having set up a defence which failed held liable to pay the costs of the action.—KEKEWICH, J.

THREATS OF CRIMINAL PROCEEDINGS.

See Contract. 7.

TIME.

See Appeal. 8.

TITHE.

1. ——

THE QUEEN *v.* CHRISTOPHERSON, **16 Q. B. D. 13.** When a house is built on land it ceases to be titheable property, because no tithe can be payable in respect of a house there being no *fructus industriales.*—LORD ESHER, M.R.

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TITHE—*continued.*

2. ——

ESDAILE *v.* ASSESSMENT COMMITTEE OF CITY OF LONDON UNION, **19 Q. B. D. 440.** At Common Law tithes are payments on things which grow from year to year, and not upon houses or rent reserved upon a lease of houses.—LOPES, L.J.

3. —— **Apportionment of.**

In re EBSWORTH AND TIDY'S CONTRACT, **42 Ch. D. 50.** As to the tithe rent-charge, I give no opinion how the case stands when a person entitled to a property which is subject to one entire tithe rent-charge sells the property in lots. It may well be that, unless he guards himself by a stipulation, he must take upon himself the duty and expense of apportioning the rent-charge as between the different sections of his estate. But there is no authority produced, and no practice proved, to shew that where a person sells a property, which, along with property belonging to other persons is subject to a tithe rent-charge, he, in the absence of any stipulation, can be required to bear the expense of apportioning the rent-charge between his property and the other property subject to it.—COTTON, L.J.

TOMB.

See Church.

TORT.

See Actio Personalis.

TOWAGE.

See Ship. 16.

TRADE MACHINERY.

See Bill of Sale. 11.

TRADE-MARK.

1. —— **False Description—Intent to Defraud.**

WOOD *v.* BURGESS, **24 Q. B. D. 162.** False description constitutes an offence, an intent to defraud not being a necessary ingredient of it.—LORD COLERIDGE, C.J.

2. —— **Words calculated to Deceive.**

ENO *v.* DUNN, **15 App. Cas. 262.** Ever since Courts of Equity have interfered to protect traders in the exclusive use of marks and words which they have lawfully appropriated for the purpose of distinguishing their goods, it has been an established principle that this protection is not to be extended "to persons whose case is not founded in truth." That is said to be a "clear rule." Unfortunately, in the competition for business, a trader not un-

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TRADE-MARK—*continued.*

frequently endeavours to attract custom by representing that the goods which he offers for sale are different in origin, composition, or character from what they really are. The public are constantly tempted to buy one thing when they think they are buying another. It is not, as has been observed by Lord Cairns, the province of the Court "to protect speculations of this kind."—LORD MACNAGHTEN.

TRADE-MARKS.

See Patents, Designs and Trade Marks Act, 1888.

TRADERS.

See Conspiracy. 2.

TRADING INWARDS.

See Ship. 19.

TRAMWAYS—TRAMWAYS ACT, 1870-1.

BRISTOL TRAMS AND CARRIAGE COMPANY *v.* MAYOR, &C., OF BRISTOL, **25 Q. B. D 427.**

TRAMWAYS ACT, 1870.

See Tramways.

TRANSFER OF STOCK INTO JOINT NAMES—Resulting Trust—Presumption.

STANDING *v.* BOWRING, **31 Ch. D. 287.** The rule is well settled that where there is a transfer by a person into his own name jointly with that of a person who is not his child, or his adopted child, then there is *primâ facie* a resulting trust for the transferor. But this can be rebutted by shewing that the transferor intended a benefit to the transferee.—COTTON, L.J.

289. Trusts are neither created nor implied by law to defeat the intentions of donors or settlors; they are created or implied or are held to result in favour of donors or settlors, in order to carry out and give effect to their true intentions, expressed or implied. . . . Although a donee may dissent from and thereby render null a gift to him, yet a gift to him of property, whether real or personal, by deed, vests the property in him, subject to his dissent.—LINDLEY, L.J.

TRANSITUS.

See Stoppage in Transitu.

TRIAL BY JURY.

1. ——

TIMSON *v.* WILSON. FANSHAWE *v.* LONDON AND PROVINCIAL DAIRY COMPANY, **38 Ch. D. 77.** Rule 6 gives no right to trial by jury

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TRIAL BY JURY—*continued.*

in any case which before could be tried without a jury, without any consent of parties: *The Temple Bar.* The actions now before us are actions for nuisance in the Chancery Division. These, before the Judicature Acts, would be tried by the judge without a jury unless he saw fit to direct them to be tried with a jury. They come within rule 7 (*a*), and the trial without a jury being the normal mode of trial, those who ask for a jury must satisfy the Court that it is better for the action to be tried with a jury.—LINDLEY, L.J.

2. —— **Evidence.**

THE QUEEN *v.* PAUL, **25 Q. B. D. 207.** For the excellency of the trial by jury is in that they are the triers of the credit of the witnesses as well as the truth of the fact; it is one thing, whether a witness is admissible to be heard, another thing, whether they are to be believed when heard.—HAWKINS, J.

TRUST.

1. —— **Investment—Insufficient Security—Law Agent, Liability of—Solicitor.**

RAE *v.* MEEK, **14 App. Cas. 568.** Liability as against the defenders, with whose case I am now dealing, could, in my opinion, only be established by proof that they were employed to give advice either by the appellants, or by some person on their behalf, and that, having undertaken this employment, they neglected their duty. Now, they certainly were not employed by the appellants, nor do I think they were employed on their behalf. The alleged duty, if it existed at all, was to the trustees, and not to the beneficiaries. If there has been a breach of it, the trustees and not the beneficiaries, are the parties to sue. There may be cases where, if trustees failed to call to account those who were under liability in respect of acts injurious to the trust estate, the beneficiaries might compel them to do so, or even enforce the right themselves. But no such question is raised by the averments in the present action.—LORD HERSCHELL.

2. —— **Solicitor.**

STANIAR *v.* EVANS, **34 Ch. D. 476.** The person employed by trustees to act as their solicitor with respect to a trust estate, is commonly enough said to be a solicitor to the trust estate. But that is an inaccurate way of describing his position. He is not solicitor to the trust estate. He has no retainer from the trust estate, and he is not employed by the trust estate; but he is the person employed by the trustee for his own purposes as trustee.

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TRUST—*continued.*

His retainer is by the trustee personally. The trustee personally is liable to pay his costs, and the trustee personally is the only person to whom the solicitor can look for those costs. The solicitor of the trustee has no lien whatever upon the trust estate for those costs. That is the general rule. There are certain exceptions to it by which a trustee's solicitor may in that character have a better claim. He may, for instance, have got a statutory charge by an order of Court in respect of his having recovered or preserved either the whole of the trust fund, or some part of it. He may possibly have some lien on documents in his hands. He may have a right, as between himself and his client, to go against that client's share of the trust estate. But, except in those respects, he has no claim on the trust estate; the general rule is what I have stated. The trustee, on the other hand, has a right to be indemnified out of the trust estate with respect to expenses properly incurred by him on behalf of that trust estate, including, among other things, costs properly incurred by him in employing a solicitor, and the trustee having a right to be indemnified by the trust estate has a right to have that indemnity as a first charge on the trust estate, and the solicitor indirectly gets the benefit of that; but he has not directly any charge on the estate, and any payment he gets out of the estate is only through the right of the trustee, who is his employer, to be indemnified out of the estate. Therefore, the solicitor of the trustee does not stand in any better position as against the trust estate than his client the trustee himself does.—NORTH, J.

3. —— **Trustees Borrowing to Pay Debts.**

BINNIE v. BROOM, **14 App. Cas. 588.** All that the law requires from a trustee who has power to sell or borrow is, that he shall follow the dictates of ordinary prudence in adopting the one course or the other; and the question whether he did or did not act prudently is one of fact, which must be solved according to the circumstances of each case.—LORD WATSON.

TRUSTEE.

1. —— **Agents of—Liability for Agents' Acts.**

In re WEALL. ANDREWS *v.* WEALL, **42 Ch. D. 678.** A trustee is bound to exercise discretion in the choice of his agents, but so long as he selects persons properly qualified he cannot be made responsible for their intelligence or their honesty. He does not in any sense guarantee the performance of their duties. It does

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TRUSTEE—*continued.*

not, however, follow that he can intrust his agents with any duties which they are willing to undertake, or pay them or agree to pay them any remuneration which they see fit to demand. The trustee must consider these matters for himself, and the Court would be disposed to support any conclusion at which he arrives, however erroneous, provided it really is his conclusion—that is, the outcome of such consideration as might reasonably be expected to be given to a like matter by a man of ordinary prudence guided by such rules and arguments as generally guide such a man in his own affairs. If trustees fail to exercise their discretion, or purporting to exercise it, do so in such a manner that the Court is bound to infer that they have not done so honestly, . . . the Court is at liberty, and under certain circumstances may be bound, for the protection of *cestuis que trust*, to disallow the trustees' costs, or even make them pay those of others.—KEKEWICH, J.

2. —— **Balance in Hand—Liability for Interest.**

In re HULKES. POWELL *v.* HULKES, **33 Ch. D. 558.** A trustee is liable to be charged . . . with interest on balances in his hands . . . at 4 per cent., being at the same time at liberty to excuse or justify himself where he shews that the exigencies of the trust required that he should retain the money in question in his hands for the purpose of due administration of the estate.—CHITTY, J.

3. —— **Disclaimer.**

In re BIRCHALL. BIRCHALL *v.* ASHTON, **40 Ch. D. 439.** It is now established that a man's assent to a devise is presumed unless he disclaims, which may be by conduct as well as by record or by deed.—LINDLEY, L.J.

It is well settled that an estate may be disclaimed by conduct without any express declaration of disclaimer.—LOPES, L.J.

4. —— **Duty to Enforce Payment of Trust Funds—Liability.**

In re BROGDEN. BILLING *v.* BROGDEN, **38 Ch. D. 567.** Where a trustee does not do that which it is his duty to do, *primâ facie* he is answerable for any loss occasioned thereby. . . .

568. It is the trustee who is seeking to excuse himself for the consequences of his breach of duty. It was his duty to take active proceedings if necessary earlier—to take active proceedings by way of action at law, if necessary; and if the trustee is to excuse himself, it is for him to shew that if he had taken pro-

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TRUSTEE—*continued.*

ceedings no good would have resulted from it. Once shew that he has neglected his duty and *primâ facie* he is answerable for all the consequences of that neglect.—COTTON, L.J.

5. —— Investment of Trust Money—Liability for Wrong Investment.

In re SALMON. PRIEST *v.* UPPLEBY, **42 Ch. D. 367.** As a general rule the law requires of a trustee no higher degree of diligence in the execution of his office, than a man of ordinary prudence would exercise in the management of his own private affairs. Yet he is not allowed the same discretion in investing the moneys of the trust as if he were a person *sui juris* dealing with his own estate. Business men of ordinary prudence may, and frequently do, select investments which are more or less of a speculative character; but it is the duty of a trustee to confine himself to the class of investments which are permitted by the trust, and likewise to avoid all investments of that class which are attended with hazard. So, so long as he acts in the honest observance of these limitations, the general rule already stated will apply. The Courts of Equity in England have indicated and given effect to certain general principles for the guidance of trustees in lending money upon the security of real estate. Thus it has been laid down that in the case of ordinary agricultural land the margin ought not to be less than one-third of its value; whereas in cases where the subject of the security derives its value from buildings erected upon the land, or its use for trade purposes, the margin ought not to be less than one half. I do not think these have been laid down as hard and fast limits, up to which trustees will be invariably safe, and beyond which they can never be in safety to lend, but as indicating the lowest margins which in ordinary circumstances a careful investor of trust funds ought to accept.—LORD WATSON; COTTON, L.J.

6. —— Liability of.

See Charitable Trust.

7. —— Solicitor's Lien.

In re BLUNDELL. BLUNDELL *v.* BLUNDELL, **40 Ch. D. 377.** A trustee in whose name shares in a company are standing is entitled to be indemnified by his *cestui que trust* against the payment of calls. . . .

379. Solicitors cannot contract with the estate; they have no lien on the estate. . . . It was not, to my mind, a decision that

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TRUSTEE—*continued.*

in every case in which the solicitor of a trustee receives moneys in payment of costs out of the trust estate, he can stand in no better position than the trustee himself does.—STIRLING, J.

8. —— **Solicitors to Trustees.**

In re VERNON, EWENS & Co., **33 Ch. D. 412.** They seem to have conducted themselves just as other clients conduct themselves (*i.e.*, with confidence) towards their solicitors.—LINDLEY, L.J. [And they (the trustees) cannot therefore be charged with negligence.]

See Limitations, Statute of. 1.
Mortgage. 4.
New Trustees.

TRUSTEES ACT, 1888.

To amend the Law relating to the Duties, Powers, and Liability of Trustees.

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U.

ULTRÀ VIRES.

See Building Society.
Company. 16.
Railway Company. 11.

UNDUE INFLUENCE—Convent—Voluntary Gift.

ALLCARD *v.* SKINNER, **36 Ch. D. 182.** I cannot find any authority which actually covers the present case. But it does not follow that it is not reached by the principle on which the Court has proceeded in dealing with the cases which have already called for decision. They illustrate but do not limit the principle applied to them.

The principle must be examined. What then is the principle? Is it that it is right and expedient to save persons from the consequences of their own folly? or is it that it is right and expedient to save them from being victimised by other people? In my opinion, the doctrine of undue influence is founded upon the second of these two principles. Courts of Equity have never set aside gifts on the ground of the folly, imprudence, or want of foresight on the part of donors . . . It would obviously be to encourage folly, recklessness, extravagance and vice, if persons could get back property which they foolishly made away with, whether by giving it to charitable institutions, or by bestowing it on less worthy objects. On the other hand, to protect people from being forced, tricked, or misled in any way by others into parting with their property is one of the most legitimate objects of all laws; and the equitable doctrine of undue influence has grown out of and been developed by the necessity of grappling with insidious forms of spiritual tyranny and with the infinite varieties of fraud.

As no Court has ever attempted to define fraud, so no Court has ever attempted to define undue influence, which includes one of its many varieties. The undue influence which Courts of Equity endeavour to defeat is the undue influence of one person over another; not the influence of enthusiasm on the enthusiast, who is carried away by it, unless indeed such enthusiasm is itself the result of external undue influence. But the influence of one mind over another is very subtle, and of all influences religious influence is the most dangerous and the most powerful, and to counteract it

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UNDUE INFLUENCE—*continued.*

Courts of Equity have gone very far. They have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof of the actual exercise of such influence; and the Courts have done this on the avowed ground of the necessity of going this length in order to protect persons from the exercise of such influence under circumstances which render proof of it impossible. The Courts have required proof of its non-exercise, and, failing that proof, have set aside gifts, otherwise unimpeachable. . . She, Miss Skinner, the donor, was absolutely in the power of the lady superior and Mr. Nihill. A gift made by her under these circumstances to the lady superior, cannot, in my opinion, be retained by the donee. The equitable title of the donee is imperfect by reason of the influence inevitably resulting from her position, and which influence experience has taught the Courts to regard as undue.—LINDLEY, L.J.

See Will. 13.

USER.

See Highway. 3.

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V.

VALUATION.

See Arbitration and Award. 7.

VENDOR AND PURCHASER.

1. ——

ROYAL BRISTOL PERMANENT BUILDING SOCIETY *v.* BOMASH, **35 Ch. D. 397.** The vendor under a contract of sale of real estate is a trustee for the purchaser. Of course we all know that he is only a trustee in a modified sense . . . A vendor having property under his control in his possession which he has contracted to sell, is bound to keep it in a reasonable state of repair, so that a purchaser may take the thing which he has contracted to buy, unless there are some special circumstances which alter that obligation.—KEKEWICH J.

2. ——

In re BRYANT AND BARNINGHAM'S CONTRACT, **44 Ch. D. 221.** It is said that if a vendor, who at the time when he sells has only a partial interest in an estate, affects to sell the fee simple, the Court will enforce that contract, provided that before the time fixed for completion, he can get in the whole fee simple. That is quite right; for then he acquires the power of carrying out his contract literally; he then can convey the fee simple. Of course, the Court would not put the parties through the idle form of conveying to the vendor, and the vendor conveying to the purchaser, when the very same thing might be accomplished by getting the person entitled to the outstanding estate or interest to convey direct to the purchaser.—KAY, J.

223. I do not doubt that, if a vendor is able to make a good title before the day fixed for completion of the contract, the contract can be enforced. But that is not the case here. The vendors cannot, even now, shew a good title in themselves. They cannot convey, because their power does not arise till after the death of the tenant for life, who is still living. But they say, "although we cannot convey, the tenant for life can sell under the powers of the Settled Land Act." If the tenant for life were a person who could concur, so as to make the title of the vendors a good title, the case would be different.—COTTON, L.J.

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VENDOR AND PURCHASER—*continued.*

3. —— **Conditions of Sale—Particulars—Deficiency of Quantity.**

In re TERRY AND WHITE'S CONTRACT, **32 Ch. D. 31.** I take it there can be no doubt whatever that the vendor here would sue in vain for specific performance without compensation; but that is quite a different thing from saying that the purchaser is entitled to insist upon specific performance without paying the price contracted for.—LINDLEY, L.J.

4. —— **Conditions of Sale—Making and Insisting on Requisitions.**

In re STARR-BOWKETT BUILDING SOCIETY AND SIBUN'S CONTRACT, **42 Ch. D. 388.** The condition on which the question turns is a very stringent condition, one against which I can well understand that a struggle would be made; and a struggle has been made in this case to construe the condition in a different way from what the words import. The counsel for the appellant sought to import three terms: First, that the purchaser was entitled to be told which requisition the vendor was unable or unwilling to answer; secondly, that he must allege a reasonable ground for withdrawing from the contract, if he does withdraw; and in the third place, that the purchaser is entitled to a reasonable time in which to withdraw his requisitions, and that it is not till a reasonable time has expired that this power to annul the contract is to be exercised by the vendor. I am not saying that these three terms are not reasonable terms to be inserted in such a contract, but not one of them is inserted in this condition. Therefore I must reject all these three glosses. Then it was pressed upon us that the word "make" meant to "insist on." That is a very remarkable construction of the word . . . We cannot alter the words of the contract by adopting the gloss which the counsel for the appellant have put upon it. The Courts, it is true, have introduced a term into such contracts, namely, that the power to rescind must be exercised reasonably and not arbitrarily or capriciously. Whether the introduction of such a term is construing a contract, or making a fresh one, I do not say; but there is such a current of dicta and authorities on that point that it must be considered settled.—FRY, L.J.

5. —— **Equitable Conversion.**

In re THOMAS. THOMAS *v.* HOWELL, **34 Ch. D. 169.** If the title, being bad and not having been accepted, was in such a state at the time of death that the purchaser was entitled to refuse the estate, then there was not a valid contract to sell.—JESSEL, M.R.; KAY, J.

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VENDOR AND PURCHASER—*continued.*

6. —— Misleading Conditions—Restrictive Covenants—Return of Deposit.

NOTTINGHAM PATENT BRICK AND TILE COMPANY *v.* BUTLER, **16 Q. B. D. 784.** When an estate is put up for sale in lots, subject to a condition that restrictive covenants are to be entered into by each of the purchasers with the vendor, and the vendor is intending at that sale to sell the whole of the property, the question, whether it is intended that each of the purchasers shall be liable in respect of those restrictive covenants to each of the other purchasers, is a question of fact, to be determined by the intention of the vendor and of the purchasers, and that question must be determined upon the same rules of evidence as every other question of intention. And, if it is found that it was the intention that the purchasers should be bound by the covenants *inter se*, a Court of Equity will, in favour of anyone of the purchasers, insist upon the performance of the covenants by any other of them, and will do so under such circumstances without introducing the vendor into the matter . . . It is impossible to say that the mere fact that the lots were not all sold on the one day can make any difference.—LORD ESHER, M.R.

786. It is impossible for a vendor, knowing of a defect in his title, either by himself or his agent to put forward conditions of sale which are to force upon a purchaser a bad title of which he knew, but which he did not disclose . . . A Court of Equity would never have enforced a contract under such circumstances . . . The vendor was insisting that the Court should force on the purchasers from him a bad title. The Court will not do that.—LORD ESHER, M.R.

787. It is said that Butler was a purchaser for value without notice of the restrictions, and then it is said that, if the plaintiffs took a conveyance from him, they would not be subject to the restrictions. As at present advised, I think that would be so, and that, when once there has been a purchaser for value without notice of the restrictions, the restrictions are gone, and a good title can afterwards be made free from them. But the title would then depend upon the question whether the previous purchaser did buy without notice; that must always be a question of fact and a matter of evidence, and a title depending upon evidence of matters of fact is a title which is capable of being disputed in a Court of Law; and, although the plaintiffs would in point of law, if the alleged fact was true, get the property free from the restrictions, yet in all probability, or almost certainty, they would be buying a lawsuit in order to get their title clear. Under such

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VENDOR AND PURCHASER—*continued.*

circumstances, where the rectitude of the title depends upon facts which very probably will be disputed, and are certainly capable of being disputed, a Court of Equity will not, as I understand, enforce the contract. Therefore, in that view also, the defendant would not be entitled to specific performance of the contract.—LORD ESHER, M.R.

788. A person with notice of an equitable claim may safely purchase of a person who bought *bonâ fide*, and without notice of it; but a purchaser would not be compelled to accept a title depending upon proof of the seller not having had notice of an incumbrance.—LORD ST. LEONARDS; LINDLEY, L.J.

789. If the defendant intended to cover the blot on his title, he ought to have used a condition pointing to the blot much more specifically . . . If the purchasers did not choose to take what might under assumed circumstances be a good holding title, it does not follow that they would be entitled to get back their deposit.—LINDLEY, L.J.

7. —— **Restrictive Covenants.**

In re EBSWORTH AND TIDY'S CONTRACT, **42 Ch. D. 47.** The first point is as to the restrictive covenants . . . It is impossible to say that the restrictive covenants in the present case are to be disregarded as being necessarily inoperative . . . In my opinion, the existence of these covenants is a fatal objection.—COTTON, L.J.

8. —— **Letters—Time for Acceptance—Withdrawal.**

BRISTOL, CARDIFF, AND SWANSEA AERATED BREAD COMPANY *v.* MAGGS, **44 Ch. D. 625.** If two letters standing alone would be evidence of a sufficient contract, yet a negotiation for an important term of the purchase and sale carried on afterwards is enough to shew that the contract was not complete, and so far as my own judgment is concerned, I entirely agree in the justice and equity of such a rule.

Cases have been referred to in which a subsequent discussion as to the preparation of a formal contract even where the letters mention that such a contract is contemplated has been held not to prevent the letters from being themselves a binding contract. There are many such decisions, and the distinctions between some of them are remarkably fine; but they are all subject to the observation that the formal document contemplated is one which is to put into more correct form a completed agreement, not to alter that agreement by adding a substantial term to it. I have already pointed out that the subsequent negotiation in this case

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VENDOR AND PURCHASER—*continued.*

was in no sense concerning a matter of form but was a negotiation for an additional term to which the plaintiffs had no right according to existing decisions at law or in equity. It was suggested that the ten days during which the offer was to remain open had not expired when it was withdrawn. But this can make no difference. The offer was not a contract and the term that it should remain open for ten days was therefore not binding. It has often been held that such an offer may, notwithstanding, be withdrawn within the time limited. I decide this case against the plaintiffs upon the ground that, although the two letters relied on would, if nothing else had taken place, have been sufficient evidence of a complete agreement, yet the plaintiffs have themselves shewn that the agreement was not complete by stipulating afterwards for an important additional term which kept the whole matter of purchase and sale in a state of negotiation only, and that the defendant was therefore at liberty to put an end to the negotiations as he did by withdrawing his offer.—KAY, J.

9. —— **Letters, Contract contained in—Offer and Acceptance—Subsequent Correspondence.** BELLAMY *v.* DEBENHAM, **45 Ch. D. 492.** It has always been held to be open to a defendant, against whom specific performance is sought, to shew that the written document signed by him did not include all the terms of the actual contract, and that he may do that, either by reference to other correspondence which can fairly be read with the letters which are said to constitute the contract, or by means of parol evidence outside the written documents altogether. The defendant may say, that when a contract is found in correspondence, you must look not only at the two or three formal letters which are said in themselves to constitute a contract, but also at the other correspondence.

In *Hussey* v. *Horne Payne* there were certain letters which apparently constituted a complete contract; but, on looking into the whole correspondence, it was found that those letters did not contain all the terms of the contract, because the earlier letters shewed that there were other terms then in negotiation, and the later letters also shewed that those terms were still in negotiation and were not concluded. It was clear, therefore, that the letters which were said to constitute the contract did not contain the whole of it, and, that being so, that which was called a contract was not complete, and could not therefore be enforced. The question therefore is, whether subsequent negotiations can be

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VENDOR AND PURCHASER—*continued.*

looked at, merely for the purpose of preventing that which would otherwise be a complete contract from being so. In my opinion, when once it is shewn that there is a complete contract, it is impossible that further negotiations between the parties can, without the consent of both, get rid of what I may call the crystallized contract already arrived at, and as, in the present case, contained in the letters. Of course, it may be an open question whether the terms of the contract really were all settled, and the fact that further negotiations took place, as well as the language of those negotiations, may be very important as throwing light upon the state of things at the time when the alleged contract was signed by the party to be charged. The question is really one of fact; and if, in considering that question of fact, one should come to the conclusion that the negotiations which subsequently took place related to new matter started for the first time after the contract was complete, in my opinion they would have no weight in preventing full effect being given to the written contract previously existing.

495. I do not in any way dissent from the view which Mr. Justice Kay took of the case then before him; but those remarks of his, if they meant as much as they might possibly mean, seem to me to go too far, and I should not be prepared to follow them.—NORTH, J. [Affirmed [1891] 1 Ch. 412.]

10. —— **Sale of Business—Goodwill—Right of Purchaser to use Vendor's Name.**

THYME *v.* SHOVE, **45 Ch. D. 580.** The plaintiff has assigned the goodwill of his business to the defendant, and by virtue of that assignment the defendant in carrying on the business has the right to use the name of the assignor for the purpose of shewing that the business is the business formerly carried on by the assignor, and he has the full right so to use it, subject to this: that he must not exercise that right so as to expose the assignor to any liability by holding him out to be the real owner of the business. That is the only limit of the defendant's right to use the plaintiff's name.

581. The dissolution decreed by the Court has been duly advertised, and the person dealing with Miss Walker for the first time can make Mr. or Mrs. Levy liable.—STIRLING, J.

VERDICT OF JURY.

COMMISSIONER FOR RAILWAYS *v.* BROWN, **13 App. Cas. 134.** Where the question is one of fact, and there is evidence on both sides

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VERDICT OF JURY—*continued.*

properly submitted to the jury, the verdict of the jury once found ought to stand.—LORD FITZGERALD.

VOLUNTARY GIFT.

See Undue Influence.

VOLUNTARY LIQUIDATOR.

See Company, 23.

VOLUNTARY SETTLEMENT.

NANNEY *v.* MORGAN, **37 Ch. D. 352.** The law as regards voluntary settlement is this:—If the settlor transfers all the interest that he is in a position to transfer at that time, then it is effectual. If he does not, then the Court will not assist volunteers as against the settlor, and the settlement is ineffectual as regards that which he might have effectually transferred, and which he did not transfer as effectually as he could.—COTTON, L.J.

VOLUNTEERS.

GREEN *v.* PATERSON, **32 Ch. D. 106.** It appears to me that the petition in this case is to be treated as an action by the children to enforce the covenant to settle contained in the post-nuptial settlement of 1870. Those children were not parties to that contract, and, *primâ facie*, no person who is a stranger to a contract can sue to enforce it. But upon that general rule there is, as is well known, this exception grafted, that children born of the marriage in contemplation of which a settlement has been executed, are treated to a certain extent as if they were parties, and they are allowed to sue for the execution of that settlement. It appears to me that in the case of a post-nuptial settlement that rule cannot apply. The consideration of marriage is not infused into that settlement. It is made for considerations which arise after the marriage, and, therefore, in point of principle, I am unable to see how the exception which applies to an ante-nuptial settlement, giving children of the marriage a right to sue for the performance of those covenants, can apply to post-nuptial settlements.—FRY, L.J.

107. As a general rule, where two persons, for valuable consideration, as between themselves, covenant to do an act for the benefit of a third person, that third person cannot enforce the covenant against the two, although either of the two might, as against the other.—FRY, L.J.

See Settlement. 2.
Settlement. 3.

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W.

WAIVER.

FRY *v.* MOORE, **23 Q. B. D. 398.** He has since taken at least two steps on the theory that the order for substituted service was a proper order, which amounts to a waiver of the irregularity.—LINDLEY, L.J., *cf.* **14 P. D. 127.**

WARD OF COURT.

See Infant. 3.

WARRANTY OF AUTHORITY.

See Principal and Agent. 8.
Principal and Agent. 9.

WASTE.

1. —— **Settled Land Act.**

In re RIDGE. HELLARD *v.* MOODY, **31 Ch. D. 507.** Whenever a settlor has not stated that a tenant for life is not to be impeachable for waste, he is impeachable.—FRY, L.J.

508. Under the settlement and will and apart from any statute, as there are no open mines, quarries, or brickfields, and as there is nothing either in the will or the settlement entitling the trustees to commit waste for her benefit; or entitling her to the capital moneys produced by selling the land, she would only be entitled to the income produced by letting the land to any ordinary tenant, or to the income arising from its sale.

As between a tenant for life and remainderman, money paid by a lessee as the price of land won, or carried away and sold by the lessee in the shape of minerals, stones, or bricks, is always treated as capital, and not as income, unless the settlor has expressed an intention to the contrary by making the tenant for life unimpeachable for waste, or by some other expression; or unless at the time of the settlement the mines and minerals let were open, in which case an intention to the contrary is inferred unless such inference is inconsistent with the language of the settlement.—LINDLEY, L.J.

2. —— **Permissive.**

In re CARTWRIGHT. AVIS *v.* NEWMAN, **41 Ch. D. 532.** The legal tenant for life is not liable for permissive waste.

WASTES (ROADSIDE).

See Local Government Act, 1888.

WATER-RATE.

See Landlord and Tenant. 9.

WIDOWS OF INTESTATES.

See Intestates Estates Act, 1890.

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WILL.

1. —— Church—Monument in.

In re DEAN. COOPER-DEAN *v.* STEVENS, **41 Ch. D. 556.** A trust for benefit of specified animals is good and is not a charity: a trust to erect and repair a monument is good, if it be limited in point of time, so as not to exceed limits fixed by rule against perpetuities.—NORTH, J.

2. —— Condition.

In re MOORE. TRAFFORD *v.* MACONOCHIE, **39 Ch. D. 129.** According to English law if a condition subsequent which is to defeat an estate, is against the policy of the law, the gift is absolute, but if the illegal condition is precedent there is no gift.—COTTON, L.J.

3. —— Construction.

In re BRIGHT-SMITH. BRIGHT-SMITH *v.* BRIGHT-SMITH, **31 Ch. D. 319.** You ought if possible to read the will so as to lead to a testacy and not to an intestacy. *Falsa demonstratio non nocet.*—LORD ESHER, M.R., CHITTY, J.

4. —— Construction.

In re JODRELL. JODRELL *v.* SEALE, **44 Ch. D. 606.** If you find that that is the nomenclature used by the testator, taking his will as the dictionary from which you are to find the meaning of the terms that he has used, that is all which the law, as I understand the cases, requires.—LORD HALSBURY, L.C. [Affirmed [1891] A. C. 304.]

5. —— Construction—Illegitimate Children.

In re HASELDINE. GRANGE *v.* STURDY, **31 Ch. D. 518.** To construe the will, the Court is entitled to use the circumstances which surrounded the testator, not for the purpose of speculating as to what his intention was, but for the purpose of throwing light upon the true meaning of his words . . . The word "children" in a will means legitimate children, unless when the facts are ascertained and applied to the words of the will some repugnancy or inconsistency would result from so interpreting them.—BOWEN, L.J.

6. —— Construction—Supplying Omission by Inference.

MELLOR *v.* DAINTREE, **33 Ch. D. 206.** When the main purpose and intention of the testator are ascertained to the satisfaction of the Court, if particular expressions are found in the will which are inconsistent with such intention, though not sufficient to control it, or which indicate an intention which the law will

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WILL—*continued.*

not permit to take effect, such expressions must be discarded or modified; and, on the other hand, if the will shews that the testator must necessarily have intended an interest to be given which there are no words in the will expressly to devise, the Court is to supply the defect by implication, and thus to mould the language of the testator, so as to carry into effect, as far as possible, the intention which it is of opinion that the testator has on the whole will sufficiently declared. LORD KINGSDOWN; NORTH, J.

207. I am not to be deterred by any accidental omission from putting the true signification on the will, and I am not to substitute what some blundering attorney's clerk or law stationer has written in this will, and treat that blunder as if it was the intention of the testator.—BACON, V.C., NORTH, J.

7. —— **Execution—Sufficiency of Signature.**

DAINTREE AND BUTCHER *v.* FASULO, **13 P. D. 103.** It is admitted law that it is not necessary for the testator to say, "this is my signature," but if it is placed so that the witnesses can see it, and what takes place involves an acknowledgment by the testator that the signature is his, that is enough.—COTTON, L.J.

8. —— **Exoneration of Personal Estate.**

KILFORD *v.* BLANEY, **31 Ch. D. 61.** It is not enough for the testator to have charged his real estate with, or in any manner devoted it to, the payment of his debts; the rule of construction is such as aims at finding, not that the real estate is charged, but that the personal estate is discharged.—LORD ELDON, LORD HALSBURY, L.C.

65. In order to exonerate the personal estate you must find, not merely words onerating the real estate, but words exonerating and discharging the personal estate.—FRY, L.J.

66. If a testator charges real estate with payment of debts in exoneration of his personal estate, and bequeaths the personal estate to particular individuals, he is held to have intended to exonerate his personal estate for the benefit only of those legatees; and, therefore, if the bequest of the personal estate fails so that the personal estate goes to other persons than those intended by the testator, those persons are not entitled to the benefit of the exoneration . . . Where the gift to the person intended to be benefited by the exoneration fails, the exoneration itself fails.—FRY, L.J.

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WILL—*continued.*

9. —— **Legacy to Creditor—Satisfaction.**

In re HUISH. BRADSHAW *v.* HUISH, **43 Ch. D. 264.** It has long been settled that, in the case of a debt owing by a testator, if the testator afterwards makes a will and gives a legacy of the same or a greater amount to the creditor, and then in his will directs that his debts and legacies shall be paid, that direction rebuts the presumption of satisfaction of the debt by the legacy. Now, what difference is there between a discretion to pay debts and legacies, and a direction to pay debts only? There is none, because the gift of a legacy is in itself a direction that the legacy shall be paid. Therefore, all that is material is, that there should be a direction that debts should be paid.—KAY, J.

10. —— **Lost Will—Probate—Presumption.**

HARRIS *v.* KNIGHT, **15 P. D. 179.** The maxim, "*Omnia præsumuntur rite esse acta,*" is an expression, in a short form, of a reasonable probability, and of the propriety in point of law of acting on such probability. The maxim expresses an inference which may reasonably be drawn when an intention to do some former act is established; when the evidence is consistent with that intention having been carried into effect in a proper way; but when the actual observance of all due formalities can only be inferred as a matter of probability. The maxim is not wanted where such observance is proved, nor has it any place where such observance is disproved. The maxim only comes into operation where there is no proof one way or the other; but where it is more probable that what was intended to be done was done as it ought to have been done to render it valid; rather than that it was done in some other manner which would defeat the intention proved to exist, and would render what is proved to have been done of no effect.—LINDLEY, L.J.

11. —— **Power of Appointment—Death of one Object.**

In re WARE. CUMBERLEGE *v.* CUMBERLEGE-WARE, **45 Ch. D. 276.** Where a power is given by will to appoint property amongst several objects, and the subject, in default of appointment, is given to them nominative and not as a class, as tenants in common, the death of any of the objects of the power, before the testator, will to that extent defeat the power and the devise over; the power and devise over will only remain as to the shares of the survivors. If, however, an object survive the testator, but die before the donee of the power, the power and devise over will remain.—STIRLING, J.

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WILL—*continued.*

12. —— Special Power—General Devise.

In re MILLS. MILLS *v.* MILLS, **34 Ch. D. 190.** The short question in this case is whether a special power of appointing real estate among children or issue is exercised, since the Wills Act, by a general devise of real estate where the appointer at the date of his will had no real estate of his own? . . . It is purely a question of intention. . . . The intention of a testator can only be inferred from the words of his will, and from the circumstances which at the time of executing it were known to him, and which the Court, putting itself in his place, is bound to regard.—KAY, J.

13. —— Undue Influence.

WINGROVE *v.* WINGROVE, **11 P. D. 82.** To be undue influence in the eye of the law there must be coercion. . . . It is not sufficient to establish that a person has the power unduly to overbear. It is necessary also to prove that in the particular case that power was exercised.—THE PRESIDENT (SIR J. HANNEN).

WITHOUT PREJUDICE.

WALKER *v.* WILSHER, **23 Q. B. D. 337.** It is, I think, a good rule to say that nothing which is written or said without prejudice should be looked at without the consent of both parties.—LORD ESHER, M.R.

WITNESS—Right to Cross-examine—Adverse Litigant.

PRICE *v.* MANNING, **42 Ch. D. 374.** Whether the witness called by one party is a litigant or non-litigant, it is a matter of discretion in the presiding judge whether the witness has shewn himself so hostile as to justify his cross-examination by the party calling him. This rule applies in a case where an opponent is called as a witness.—LOPES, L.J.

WITNESS, BRIBING.

See Principal and Agent. 5.

WRIT OF SUMMONS—Service—London Agency.

LHONEUX, LIMON & Co. *v.* HONG KONG AND SHANGHAI BANKING CORPORATION, **33 Ch. D. 446.** Where a defendant "agency" carries on a mercantile undertaking in London, service of writ on the head-manager in London is good.—BACON, V.C.

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